

**To:** Davis, Patrick[davis.patrick@epa.gov]; Sugiyama, George[sugiyama.george@epa.gov]; Ericksen, Doug[ericksen.doug@epa.gov]  
**Cc:** Schnare, David[schnare.david@epa.gov]; Bangerter, Layne[bangerter.layne@epa.gov]; Schwab, Justin[schwab.justin@epa.gov]; Munoz, Charles[munoz.charles@epa.gov]; Kreutzer, David[kreutzer.david@epa.gov]; Konkus, John[konkus.john@epa.gov]  
**From:** Greaves, Holly  
**Sent:** Tue 3/14/2017 5:18:10 PM  
**Subject:** RE: Letter for Don Benton

Yes, thanks Doug.

**From:** Davis, Patrick  
**Sent:** Tuesday, March 14, 2017 12:57 PM  
**To:** Sugiyama, George <sugiyama.george@epa.gov>; Ericksen, Doug <ericksen.doug@epa.gov>  
**Cc:** Schnare, David <schnare.david@epa.gov>; Greaves, Holly <greaves.holly@epa.gov>; Bangerter, Layne <bangerter.layne@epa.gov>; Schwab, Justin <schwab.justin@epa.gov>; Munoz, Charles <munoz.charles@epa.gov>; Kreutzer, David <kreutzer.david@epa.gov>; Konkus, John <konkus.john@epa.gov>  
**Subject:** RE: Letter for Don Benton

I will sign it gladly.

**From:** Sugiyama, George  
**Sent:** Tuesday, March 14, 2017 12:38 PM  
**To:** Ericksen, Doug <ericksen.doug@epa.gov>  
**Cc:** Schnare, David <schnare.david@epa.gov>; Greaves, Holly <greaves.holly@epa.gov>; Bangerter, Layne <bangerter.layne@epa.gov>; Schwab, Justin <schwab.justin@epa.gov>; Munoz, Charles <munoz.charles@epa.gov>; Davis, Patrick <davis.patrick@epa.gov>; Kreutzer, David <kreutzer.david@epa.gov>; Konkus, John <konkus.john@epa.gov>  
**Subject:** Re: Letter for Don Benton

I will sign

Sent from my iPhone

On Mar 14, 2017, at 11:20 AM, Ericksen, Doug <ericksen.doug@epa.gov> wrote:

I have put together the following letter for Don Benton to President Trump. I am emailing to see if the members of the Beach Head team would sign on.

Please get back to me.

Doug

## **Ex. 5 Deliberative Process (DP)**

## **Ex. 5 Deliberative Process (DP)**

Sincerely,

**To:** Ericksen, Doug[ericksen.doug@epa.gov]  
**Cc:** Schnare, David[schnare.david@epa.gov]; Greaves, Holly[greaves.holly@epa.gov]; Bangerter, Layne[bangerter.layne@epa.gov]; Schwab, Justin[schwab.justin@epa.gov]; Munoz, Charles[munoz.charles@epa.gov]; Davis, Patrick[davis.patrick@epa.gov]; Kreutzer, David[kreutzer.david@epa.gov]; Konkus, John[konkus.john@epa.gov]  
**From:** Sugiyama, George  
**Sent:** Tue 3/14/2017 4:37:41 PM  
**Subject:** Re: Letter for Don Benton

I will sign

Sent from my iPhone

On Mar 14, 2017, at 11:20 AM, Ericksen, Doug <[ericksen.doug@epa.gov](mailto:ericksen.doug@epa.gov)> wrote:

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Please get back to me.

Doug

## Ex. 5 Deliberative Process (DP)



## **Ex. 5 Deliberative Process (DP)**

Sincerely,

**To:** Reeder, John[Reeder.John@epa.gov]; Schnare, David[schnare.david@epa.gov]  
**Cc:** Flynn, Mike[Flynn.Mike@epa.gov]; Allen, Reginald[Allen.Reginald@epa.gov]  
**Sent:** Wed 2/15/2017 2:57:52 PM  
**Subject:** RE: Pruitt oath

It is my understanding that the only oath Scott takes is the one administered by the VPOTUS. All he will need here is badging and ethics briefing, correct?

Don  
Senator Don Benton  
Senior White House Advisor  
Office of the Administrator  
202.564.4711

-----Original Message-----

From: Reeder, John  
Sent: Monday, February 13, 2017 9:35 PM  
To: Schnare, David <schnare.david@epa.gov>  
Cc: Benton, Donald <benton.donald@epa.gov>; Flynn, Mike <Flynn.Mike@epa.gov>; Allen, Reginald <Allen.Reginald@epa.gov>  
Subject: Re: Pruitt oath

And maybe the I.D., set up email. Wld be nice to clear that off.

Sent from my iPhone

> On Feb 13, 2017, at 8:18 PM, Schnare, David <schnare.david@epa.gov> wrote:  
>  
> Will be at 2 pm Friday. Jackson will talk to Pruitt tonight to see if he wants to do anything on Friday. I suggested we do PSD and an informal discussion of the major issues list. We then do day one on Tuesday.  
>  
> dschnare  
>  
> Sent from my iPhone

**To:** Schnare, David[schnare.david@epa.gov]; Actadmmccabe, Catherine17[actadmmccabe.catherine17@epa.gov]; Flynn, Mike[Flynn.Mike@epa.gov]; Reeder, John[Reeder.John@epa.gov]  
**From:** Benton, Donald  
**Sent:** Thur 2/2/2017 2:49:49 PM  
**Subject:** RE: Federal workers turn to encryption to thwart Trump

Agreed. Please move quickly to insure this is not happening here.

Thanks,

Don

Senator Don Benton

Senior White House Advisor

Office of the Administrator

202.564.4711



**From:** Schnare, David  
**Sent:** Thursday, February 2, 2017 8:20 AM  
**To:** Actadmmccabe, Catherine17 <Actadmmccabe.catherine17@epa.gov>; Flynn, Mike <Flynn.Mike@epa.gov>; Benton, Donald <benton.donald@epa.gov>; Reeder, John <Reeder.John@epa.gov>  
**Subject:** FW: Federal workers turn to encryption to thwart Trump

Career SES needs to address this with gravity and speed. It needs to be done at the Division Director level.

dschnare

From: POLITICO Pro <[politicoemail@politicopro.com](mailto:politicoemail@politicopro.com)>  
Sent: Wednesday, February 1, 2017 8:12 PM  
Subject: Federal workers turn to encryption to thwart Trump

## **Federal workers turn to encryption to thwart Trump**

By Andrew Restuccia, Marianne LeVine and Nahal Toosi

02/01/2017 08:05 PM EDT

Federal employees worried that President Donald Trump will gut their agencies are creating new email addresses, signing up for encrypted messaging apps and looking for other, protected ways to push back against the new administration's agenda.

Whether inside the EPA, within the Foreign Service, on the edges of the Labor Department or beyond, employees are using new technology as well as more old-fashioned approaches — such as private face-to-face meetings — to organize letters, talk strategy, or contact media outlets and other groups to express their dissent.

The goal is to get their message across while not violating any rules covering workplace communications, which can be monitored by the government and could potentially get them fired.

At the EPA, a small group of career employees — numbering less than a dozen so far — are using an encrypted messaging app to discuss what to do if Trump's political appointees undermine their agency's mission to protect public health and the environment, flout the law, or delete valuable scientific data that the agency has been collecting for years, sources told POLITICO.

Fearing for their jobs, the employees began communicating incognito using the app Signal shortly after Trump's inauguration. Signal, like WhatsApp and other mobile phone software, encrypts all communications, making it more difficult for hackers to gain access to them.

One EPA employee even got a new, more secure cell phone, and another joked about getting a "burner phone."

"I have no idea where this is going to go. I think we're all just taking it one day at a time and respond in a way that seems appropriate and right," said one of the EPA employees involved in the clandestine effort, who like others quoted in the story was granted anonymity to talk about the sensitive discussions.

The employee added that the goal is to "create a network across the agency" of people who will raise red flags if Trump's appointees do anything unlawful.

The White House did not immediately respond to a request for comment.

While many workers across the federal government are still in wait-and-see mode, the first two weeks of the Trump administration — with its flurry of executive orders that have in some cases upended lives — have sent a sobering message to others who believe they must act now.

In recent days, career employees at the State Department gathered nearly 1,000 signatures for what's known as a "Dissent Channel" memo in which they express their anger over a Trump executive order that bars immigrants from seven Muslim-majority countries and halts refugee admissions to the country. The number of signatures was extraordinarily high, even though the letter was submitted after White House spokesman Sean Spicer essentially warned the dissenting diplomats they were risking their jobs.

The executive order on immigration and refugees caused widespread panic at airports, spurring protests and outrage around the world.

It also led to what has been the most high-profile act of defiance yet from a Trump administration official: Acting Attorney General Sally Yates on Monday ordered the Department of Justice's lawyers not to defend the order in court. Yates was fired that same night.

Current and former employees of the Labor Department, meanwhile, are using their private email accounts to send around a link to a letter asking senators to oppose the nomination of Andrew Puzder for the secretary of their agency. The employees may sign on to the letter using Google Docs. The letter will not be submitted to the Senate HELP Committee, and the signatures will not be made public, unless 200 current employees sign on.

A federal worker familiar with the letter's circulation said that it's being signed by hundreds of current and former DOL employees.

According to a [draft of the letter](#) obtained by POLITICO, the employees write that they have "serious concerns" about the fast-food magnate's willingness to protect the rights of workers given some of his past comments and actions.

The draft of the letter criticizes Puzder's comments about women, and cites some of his restaurants' advertisements which feature scantily clad women eating burgers in bikinis. Puzder has defended the ads.

"One of us once heard a colleague ask, quite seriously, whether it would violate workplace rules of civility and prohibitions against sexual harassment to view Mr. Puzder's ads on a government computer," the letter says. "We think the question is a good one."

The federal employees interviewed for this story stressed that they see themselves as non-partisan stewards of the government. But several also said they believe they have a duty to speak out if they feel a policy is undermining their mission.

Drafts of the Dissent Channel memo signed by the State Department employees insist, for instance, that instead of protecting U.S. national security through his new executive order on refugees and immigrants, Trump is endangering the United States by bolstering the terrorists' narrative that the West hates Muslims.

"I think we all have to look within ourselves and say 'Where is that line that I will not cross?'" one Foreign Service officer said.

Since Trump was elected in November, many State Department employees have also met quietly for other reasons. Groups of Muslims who work at Foggy Bottom, for instance, have quietly held meetings to discuss fears that they could be subject to witch hunts and see their careers stall under the new administration. A few of Trump's top aides have spoken out against radical Islamism in such harsh terms that some Muslims believe the aides are opposed to the religion of Islam as a whole.

Steven Aftergood, who directs the Project on Government Secrecy at the Federation of American Scientists, indicated that it's too soon to say if there's a broad trend of bureaucratic resistance to Trump taking hold.

"Quite a few federal employees seem to be looking for constructive ways to express discontent," he said. "Meanwhile, tension is still growing, not subsiding."

EPA employees are uniquely concerned about their future, having faced barbs from Trump advisers who have toyed with cutting the agency's staff by two-thirds and from other Republicans who want to eliminate the agency altogether. So career staffers are discussing the best way to alert the public to what's happening behind the scenes.

"I'm suddenly spending my days comparing the importance of the oath I took when I started my career service and the code that I have as an American," an EPA employee said.

EPA employees have started reaching out to former Obama administration political appointees, who they hope will help them spread the word about any possible improper conduct at the agency.

"It's probably much safer to have those folk act as the conduit and to act as the gathering point rather than somebody in the agency," the employee said. "You're putting your career and your livelihood and your paycheck at risk every time you talk to somebody."

Organizations like the Government Accountability Project have been busy as federal employees fret about what their new bosses may ask them to do.

"We've had a significant number of federal employees who have contacted us in recent weeks," said Louis Clark, the nonprofit's CEO. "It has to be the largest influx of people trying to reach us that we've seen."

The largest group of callers? “The people who want to know what to do if they’re asked to violate the law,” Clark said.

Jeff Ruch, the executive director of Public Employees for Environmental Responsibility, said EPA employees are in perhaps the “deepest pit of despair” among his group’s membership.

He said his group has been fielding calls on everything from what triggers a reduction in the federal workforce to how long they can carry health insurance benefits if they are pushed out.

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**From:** Benton, Donald  
**Sent:** Thur 2/2/2017 2:45:37 PM  
**Subject:** RE: Federal workers turn to encryption to thwart Trump

John,

I think this is a good idea. Look into the details at State and lets model it after theirs. Someone in communications could be assigned to monitor and respond.

Maybe we can have

Don

Senator Don Benton

Senior White House Advisor

Office of the Administrator

202.564.4711



**From:** Schnare, David  
**Sent:** Thursday, February 2, 2017 8:53 AM  
**To:** Reeder, John <Reeder.John@epa.gov>; Actadmmccabe, Catherine17 <Actadmmccabe.catherine17@epa.gov>; Flynn, Mike <Flynn.Mike@epa.gov>; Benton, Donald <benton.donald@epa.gov>  
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We might need to seriously consider a "dissent" line like the one at State. It would give them an outlet, would provide insight into their concerns, would help spot miscommunications and bad rumors, and would demonstrate the openness with which this administration wishes to act.

dschnare



**From:** Reeder, John  
**Sent:** Thursday, February 2, 2017 8:40 AM  
**To:** Schnare, David <[schnare.david@epa.gov](mailto:schnare.david@epa.gov)>; Actadmmccabe, Catherine17 <[Actadmmccabe.catherine17@epa.gov](mailto:Actadmmccabe.catherine17@epa.gov)>; Flynn, Mike <[Flynn.Mike@epa.gov](mailto:Flynn.Mike@epa.gov)>; Benton, Donald <[benton.donald@epa.gov](mailto:benton.donald@epa.gov)>  
**Subject:** RE: Federal workers turn to encryption to thwart Trump

Received. We'll talk over this am.

**From:** Schnare, David  
**Sent:** Thursday, February 02, 2017 8:20 AM  
**To:** Actadmmccabe, Catherine17 <[Actadmmccabe.catherine17@epa.gov](mailto:Actadmmccabe.catherine17@epa.gov)>; Flynn, Mike <[Flynn.Mike@epa.gov](mailto:Flynn.Mike@epa.gov)>; Benton, Donald <[benton.donald@epa.gov](mailto:benton.donald@epa.gov)>; Reeder, John <[Reeder.John@epa.gov](mailto:Reeder.John@epa.gov)>  
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He said his group has been fielding calls on everything from what triggers a reduction in the federal workforce to how long they can carry health insurance benefits if they are pushed out.

**To:** Schnare, David[schnare.david@epa.gov]  
**From:** Ericksen, Doug  
**Sent:** Tue 3/14/2017 3:54:08 PM  
**Subject:** RE: Letter for Don Benton

True point.

ericksen

**From:** Schnare, David  
**Sent:** Tuesday, March 14, 2017 11:52 AM  
**To:** Ericksen, Doug <ericksen.doug@epa.gov>  
**Subject:** Re: Letter for Don Benton

Would be nice to show Don and me as the leadership team, since that was the reality.  
Nevertheless , I'll sign it.

d

Sent from my iPhone

On Mar 14, 2017, at 11:20 AM, Ericksen, Doug <[ericksen.doug@epa.gov](mailto:ericksen.doug@epa.gov)> wrote:

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Please get back to me.

Doug

**Deliberative Process Privilege/Ex. 5**

**Deliberative Process Privilege/Ex. 5**

**To:** Kreutzer, David[kreutzer.david@epa.gov]  
**Cc:** Konkus, John[konkus.john@epa.gov]; Benton, Donald[benton.donald@epa.gov]; Schnare, David[schnare.david@epa.gov]; Munoz, Charles[munoz.charles@epa.gov]  
**From:** Ericksen, Doug  
**Sent:** Wed 2/8/2017 1:34:26 PM  
**Subject:** Re: EPA Daily News Briefing for Wednesday, February 8, 2017

Team. I agree with David that we need address this

The problem is there are many news outlets that bash conservative views and very few that are fair.

John, let's talk about this morning.

Ericksen

Sent from my iPhone

On Feb 8, 2017, at 4:09 AM, Kreutzer, David <[kreutzer.david@epa.gov](mailto:kreutzer.david@epa.gov)> wrote:

How fast can we end/replace this clip service? It seems designed to embarrass Pruitt and push the liberal agenda.

Sent from my iPhone

Begin forwarded message:

**From:** "Bulletin Intelligence" <[epa@bulletinintelligence.com](mailto:epa@bulletinintelligence.com)>  
**Date:** February 8, 2017 at 6:55:44 AM EST  
**To:** [epa@BulletinIntelligence.com](mailto:epa@BulletinIntelligence.com)  
**Subject:** EPA Daily News Briefing for Wednesday, February 8, 2017

Mobile version and searchable archives available at [epa.bulletinintelligence.com](http://epa.bulletinintelligence.com).

TO: ADMINISTRATOR AND SENIOR EXECUTIVES  
DATE: WEDNESDAY, FEBRUARY 8, 2017 7:00 AM EST

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- [Additional Reading.](#)

- [Scott Pruitt Would Be A Disaster For Colorado's Air, Water And Our Families' Health. \(DENP\)](#)

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- [Trump Firm Loses Bid To Limit Cleanup Liability For Property. \(NYT\)](#)
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### **Energy**

- [Volkswagen Announces Subsidiary To Promote Electric Vehicles. \(BLOOM, WSJ, REU\)](#)
- [Additional Reading.](#)
- [Op-Ed: EPA's Change Of Heart On Fracking Is Purely Political, To Appease 'Greens'. \(BUFRFLX\)](#)

### **Environmental Justice**

- [California Regulators, Lawmakers Discuss How To Target State Climate Spending On Disadvantaged Communities. \(LAT\)](#)

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- [The Best And Worst Countries In The World When It Comes To Air Pollution And Electricity Use. \(BIZINDER\)](#)

### **Other News**

- [EPA Official Continues Working As Washington State Senator. \(WP\)](#)
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- [Four Lawmakers Support Bill To Abolish EPA. \(BILOXISH\)](#)

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- [House Science Committee Holds "Make Environmental Protection Great Again" Hearing. \(HILL, WP, HUFFPOST, GMA, BUZZFEED\)](#)
- [Silverstein: "Secret Science Reform Act" Aims To Curb EPA's Power. \(FORBES\)](#)
- [EPA Approves Wisconsin Plan To Avoid Phosphorous Compliance With Fees. \(AP, CHIPPEWA\)](#)

### **Water**

- [US District Judge Continues Dismissing Flint Water Crisis Lawsuits Due To Safe Drinking Water Act Preemption. \(DETN, MLIVE\)](#)
- [Engineering Company Estimates Upgrading Flint's Water Plant Will Cost \\$108M. \(AP, MLIVE\)](#)
- [Additional Reading.](#)
- [New York To Expand Blood-testing Program For PFOS, PFOA. \(MTWNHER\)](#)

## **Administrator**

### **Watchdog Groups Files Open Records Lawsuit Against Pruitt.**

NPR (2/7, Wertz) reports that the Center for Media and Democracy filed an open records lawsuit against EPA Administrator-designate Scott Pruitt seeking records during his time as Oklahoma's attorney general with fossil fuel companies and the Republican Attorney General's Association. The group also asked a judge "for an injunction preventing the Oklahoma AG's office from destroying any documents related to its records request."

Reuters (2/7, Volcovici) reports that center's director of research, Nick Surgey, said, "We are doing this because these emails should be released so that people can properly vet his record before the Senate votes to confirm him."

### **Report Says Pruitt Made False Statement While Under Oath To Senate.**



The [San Francisco Chronicle](#) (2/6) reports that EPA Administrator-designate Scott Pruitt “may have made a false statement under oath to the Senate,” according to a report first filed by Fusion’s Daniel Rivero on Monday. The “underlying facts of Rivero’s article” were then confirmed by Business Insider through an “independent review of publicly available documents from the case.” During his confirmation hearing, Sen. Cory Booker (D-N.J.) asked Pruitt whether his approach to a case against several poultry companies was impacted because he previously “received \$40,000 in donations from those companies and law firms representing them.” At issue is Pruitt’s response, in which he claimed: “I have taken no action to undermine that case. I have done nothing but file briefs in support of the court making a decision.” Contradicting his claim made under oath to the Senate, Rivero and his team “found no evidence that Pruitt or his office had filed any briefs in support of making a decision with the case.”

#### **Additional Reading.**

- **Scott Pruitt Would Be A Disaster For Colorado’s Air, Water And Our Families’ Health.** [Denver Post](#). (2/7)

### **Brownfields/Superfund/Other Cleanups**

#### **Additional Reading.**

- **Trump Firm Loses Bid To Limit Cleanup Liability For Property.** [New York Times](#). (2/7, Meier)
- **EPA Starts Superfund Soil Testing In Pueblo City Parks.** [Pueblo \(CO\) Chieftain](#). (2/7)

### **Climate Change**

#### **Republican Statesmen Call For Carbon Tax.**

The [New York Times](#) (2/7, Schwartz) reports that a group of Republican statesmen are calling for a tax on carbon emissions to fight climate change. The Climate Leadership Council, led by former Secretary of State James A. Baker III, with former Secretary of State George P. Shultz and former secretary of the Treasury Henry M. Paulson, claim a carbon tax is “a conservative climate solution” based on free-market principles. Baker is scheduled to meet on Wednesday with White House officials to propose a simpler carbon tax to replace the Clean Power Plan. The [Washington Post](#) (2/7, Mooney, Eilperin) reports the Climate Leadership Council is proposing to eliminate “nearly all of the Obama administration’s climate policies in exchange for a rising carbon tax that starts at \$40 per ton and is returned in the form of a quarterly check from the Social Security Administration to every American. While “the proposal faces long odds” because “many Republicans in Congress are adamantly against a tax increase of any kind,” the Post says “the revenue-neutral ‘carbon fee and dividend’ idea” is popular among economists and some leading climate scientists,” though “Republican statesmen from past administrations” are aligning behind the proposal for the first time. The [Wall Street Journal](#) (2/7) details how the carbon tax would work as an alternative to government regulation. The [AP](#) (2/7, Lucey, Pace) also reports.

**Broad Coalition Backs Carbon Capture Tax Credit.** [TIME](#) (2/7) reports a coalition of energy firms, green groups and trade unions are backing a proposed measure that “helps fight greenhouse gas emissions by providing a tax credit for capturing and storing carbon dioxide.” Support for the Section 45Q tax credit was detailed in a letter sent last week to members of Congress which said carbon capture and storage “represents an essential component of our nation’s strategy for achieving greenhouse gas emissions reductions,” and is a “genuine win-win for our nation’s economy and environment.”

## **Industry, Congress Seeing Exiting Paris Deal A Lower Priority.**

ClimateWire (2/7) reports that President Trump is being pulled in two directions on the Paris climate agreement: “Bend to ideological opponents of global climate action, or listen to the capitalists who see a financial angle in the small print.” Trump transition staff from conservative think tanks such as the Competitive Enterprise Institute and Heritage Foundation “are keeping up the drumbeat for an early exit,” but individual companies continue to support the deal and trade groups “remain carefully agnostic.” National Mining Association spokesman Luke Popovich said “it is by no means a priority for the U.S. industry, and I’m not sure it’s a top-tier priority for the administration, either.” Senate Republicans aim to re-prioritize the accord, noting that the agreement’s only binding elements relate to reporting and transparency, with Sen. Jim Inhofe saying, “It really is hardly worth even addressing.”

## **Whistleblower Claims NOAA Manipulating Climate Change Data.**

Fox News’ Special Report (2/7) reports John Bates, who recently retired as a lead scientist of the National Climatic Data Center, made the “explosive” accusation to the Daily Mail on Sunday that the National Oceanic and Atmospheric Administration (NOAA) “intentionally manipulated data to hide a 12 -year pause in global warming and that the study was a major influence in the 2015 Paris climate summit where western nations agreed to spend billions to reduce fossil fuel use.” Bates on Tuesday testified before lawmakers on the matter in a hearing entitled “Making the EPA Great Again.” He was shown saying, “We have every reason to be skeptical that our scientific community is maintaining its integrity.”

## **Energy**

### **Volkswagen Announces Subsidiary To Promote Electric Vehicles.**

Bloomberg News (2/7, Beene) reports Volkswagen has created a new subsidiary called Electrify America LLC, which will “manage the \$2 billion it is required to spend over the next decade in support of zero-emissions technology in the U.S.” The company will invest in EV infrastructure, such as charging stations, and operate various means of raising awareness for EVs as part of its parent’s legal settlement with the EPA over emissions violations.

The Wall Street Journal (2/7, Roberts) reports that almost half of the \$2 billion is expected to be spent in California where there are high volumes of electric vehicles. The Journal also notes that the company will install chargers in 15 metro areas, and develop a 200-station cross-country charging network. The company is also expected to experiment with other mobility plans like car-sharing.

Reuters (2/7, Shepardson) reports the company will install more than 500 charging stations across the country, with 300 in those 15 metro areas. Volkswagen’s investment also includes its “Green City” initiative where it will test out other mobility concepts. Mark McNabb chief executive of Electrify America was enthusiastic about the program saying it is “an opportunity to transform an industry. How many times in life do you get that opportunity?” Reuters adds that Volkswagen must submit all plans for regulatory approval from California and the EPA, and notes the company will invest \$500 million every 30 months until it meets its goal.

### **Additional Reading.**

- Op-Ed: EPA’s Change Of Heart On Fracking Is Purely Political, To Appease ‘Greens’.

## Environmental Justice

### **California Regulators, Lawmakers Discuss How To Target State Climate Spending On Disadvantaged Communities.**

The Los Angeles Times (2/7, Megerian) reports that lawmakers, regulators, and representatives from advocacy groups met on Monday in Oakland to develop “an updated series of guidelines to send cap-and-trade revenue to low-income neighborhoods,” as required by legislation passed last year. The parties involved discussed challenges to their mission, asking questions like: “How can low-income people benefit if they don’t live in an area that’s predominantly low-income? Do transit lines passing through low-income areas count under the state guidelines?”

## International

### **NYTimes Analysis: Coal Plants May Hamper China’s Climate Pledges.**

The New York Times (2/7, Wong) reports that China’s coal plants “undermine” the nation’s “aim of being a global leader on efforts to limit climate change.” Despite such pledges to reduce carbon emissions, “at least four such plants have begun operating in China in the past four years, pushed by local governments and state-owned enterprises in coal-rich regions,” and “dozens more have been under consideration.”

### **Additional Reading.**

- **Macedonian Capital Offers Free Transport To Fight Pollution.** AP. (2/7)
- **The Best And Worst Countries In The World When It Comes To Air Pollution And Electricity Use.** Business Insider. (2/8)

## Other News

### **EPA Official Continues Working As Washington State Senator.**

The Washington Post (2/7, Rein, Dennis) reports that Washington State Sen. Doug Erickson, an early supporter of President Trump, has been tapped by the President to run “communications and helping to reshape the Environmental Protection Agency,” but he has remained “a top Republican in the Washington state Senate, which is currently in session 2,808 miles due west in Olympia.” Erickson, “has pretty much been missing in action for the first month of the legislature’s 105- day session,” and his absence “is the linchpin to party control of the state Senate, since Washington state Republicans control the chamber by just one vote.” While his “dual roles are legal, since his EPA appointment helping run the agency’s ‘beachhead’ team is temporary and can last only 120 days,” it “hasn’t stopped Democrats from pouncing.”

### **Trump’s Top Political Aide To Stay On With EPA Following Transition.**

E&E Publishing (2/8) reports that acting EPA Administrator Catherine McCabe announced that Don Benton, President Trump’s top political aide at the agency, will remain on board with the agency following the transition period.

### **Four Lawmakers Support Bill To Abolish EPA.**

The Biloxi (MS) Sun Herald (2/7, Hampton) reports that freshman Rep. Matt Gaetz's bill proposing to "terminate the Environmental Protection Agency" has been co-sponsored by three other lawmakers, including Reps. Steven Palazzo (MS), Thomas Massie (KY), and Barry Loudermilk (GA).

## **Rules/Regulations/Policy**

### **House Science Committee Holds "Make Environmental Protection Great Again" Hearing.**

The Hill (2/7, Cama) reports on the "Make Environmental Protection Great Again" hearing held by a House Science committee intent on passing the "Secret Science Reform Act," which would require all science used by the EPA to justify regulations be transparent and reproducible. During opening statements, Rep. Lamar Smith (R-Texas), the chairman of the House Science Committee, argued that "over the last eight years, the EPA has pursued a political agenda, not a scientific one." He said that the measures offers "an opportunity to right the ship at EPA and steer the agency in the right direction."

The Washington Post (2/7, Harvey) reports that "other lawmakers took issue with what they perceived to be an assault on the agency's ability to produce sound science-based regulations." The committee's ranking Democrat member, Rep. Eddie Bernice Johnson, said, "I'm disappointed but not really surprised our very first hearing in this Congress will be focused on attacking the EPA."

The Huffington Post (2/6, Kaufman) reports that witnesses speaking before the hearing include "a coal lawyer, a chemical industry lobbyist and a libertarian scholar who recently accused the Environmental Protection Agency of 'regulatory terrorism.'" The witnesses "seem likely to echo" the views of Rep. Smith.

Grist (2/7, Permenter) reports that Democratic Rep. Don Beyer "trolled" Trump supporters by wearing a "Keep the EPA Great" hat to the hearing.

BuzzFeed (2/8, Grandoni) reports that while the call for more transparency "seems benign on its face," those who oppose the bill say it is "simply a pretext for making the job of EPA scientists more difficult." For example, "Much of the research the EPA relies on to craft air and water rules are...health studies that contain personal information on patients and their family members." Disclosing such data used in an asthma study would violate health privacy laws, therefore under the proposed rule such data could be precluded from being used in the EPA's rule-making process.

**Silverstein: "Secret Science Reform Act" Aims To Curb EPA's Power.** Forbes (2/7) contributor Ken Silverstein discusses the "Secret Science Reform Act" proposed during the hearing. "On the surface," the goal of the bill is to increase transparency and to see how data is being assessed. However, Silverstein says the "true intent is to tie EPA's hands and to prevent it from carrying out its job." EPA's backers say that if implemented, the bill would "actually prevent large scale scientific studies from being used to craft regulation, given that such analyses can't be reproduced" because any attempts to do so would "be an expensive undertaking, or \$250 million over the next few years, says the Congressional Budget Office." Silverstein argues that the bill is an attempt to "curb EPA's powers," and that "allowing Pruitt a chance to kill regs with unquestionable benefits would be the agency's death knell, and probably that of the President of the United States."

### **EPA Approves Wisconsin Plan To Avoid Phosphorous Compliance With Fees.**

The [AP](#) (2/7, Lombardo) reports that the EPA approved a plan proposed by two Republican Wisconsin state lawmakers that will allow corporate polluters to “pay to delay compliance with strict phosphorous pollution standards.” The fees paid by the polluters would be used to fund county projects to reduce runoff. Wisconsin Sen. Robert Cowles “said these investments could be more effective at reducing phosphorous levels than forcing companies to make costly repairs or install water filtration systems.” Cowles also said he wasn’t sure upgrades to pollution-control equipment would make a difference in phosphorous levels. Detractors of the plan say there are already alternatives for companies that are unable to meet the standards, and that this plan only gives them more leniency. The [Chippewa \(WI\) Herald](#) (2/7, Verburg) reports, “some conservation groups have opposed the state plan, saying it lacked teeth to ensure that the fees would result in any significant improvement in water quality.”

## Water

### **US District Judge Continues Dismissing Flint Water Crisis Lawsuits Due To Safe Drinking Water Act Preemption.**

In continuing coverage, the [Detroit News](#) (2/7, Chambers) reports US District Judge John Corbett O’Meara issued an opinion and order dismissing two cases filed against Michigan Governor Rick Snyder and other state officials over the Flint water crisis. Judge O’Meara ruled that the suits were preempted by the Safe Water Drinking Act, the same reasoning he used in dismissing two other lawsuits involving the water crisis. [MLive \(MI\)](#) (2/7, Fonger) reports attorneys for one of the two cases “filed a notice of appeal of O’Meara’s decision in their case on Monday, Feb. 6.”

### **Engineering Company Estimates Upgrading Flint’s Water Plant Will Cost \$108M.**

The [AP](#) (2/7) says a report from engineering and construction company CDM Smith estimated that the total cost of upgrading Flint’s water treatment plant will be around \$108 million, which is higher than previous estimates. According to the AP, “The report estimates work on the plant can be completed in 2019-2020. The state Department of Environmental Quality must agree to the final version of the consultant’s report.”

[MLive \(MI\)](#) (2/7, Fonger) also provides coverage.

### **Additional Reading.**

- **New York To Expand Blood-testing Program For PFOS, PFOA.** [Middletown \(NY\) Times Herald-Record](#). (2/7, Sparks)

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**From:** Valentine, Julia  
**Sent:** Thur 2/16/2017 5:59:15 PM  
**Subject:** OPA Clips 2/16/17

Hi team,

The Office of Media Relations (part of the office of Public Affairs) combs the web for clips every day (latest is forwarded below). Our fantastic interns, Kat (Katherine) So and Kevin McGonagle send these as they happen, all day long. They are cumulative – each email includes all of the clips that were sent previously that day.

If you are looking for anything in particular, a clip or a number of clips on a certain topic, send us a quick email and we'll make sure it gets to you and the whole group.

Quotes from EPA are highlighted for easy scrolling.

We will also be sending, separately, clips about Mr. Pruitt:

- About confirmation prior to the vote.
- About the confirmation vote
- About his speech and event

Thanks and let us know if you need anything.

Julia P. Valentine

Assoc. Dir./Acting Dir.  
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**Personal Phone/Ex. 6**

*Below: Politico Pro, The Hill, InsideEPA, TechCrunch, The Hill, Gizmodo, Bloomberg BNA (2), Politico Pro, E&E News (2), InsideEPA (2/15)*

### **Politico Pro**

<https://www.politicopro.com/energy/whiteboard/2017/02/mccain-to-miss-pruitt-confirmation-vote-083868>

### **McCain to miss Pruitt confirmation vote**

By Austin Wright and Darius Dixon 2/16/17

Sen. [John McCain](#) says he informed Majority Leader [Mitch McConnell](#) that he will not delay his trip to the Munich Security Conference, which means he will miss a vote expected to take place on Friday to confirm Scott Pruitt as EPA administrator.

McConnell had asked senators to stay in Washington for the Friday vote, and McCain said he did not know if his travel plans would affect the vote.

"I don't know. I told them months ago that this conference in Munich is one of the most important gatherings conducted and I told them I was going months ago," McCain said.

Sen. [Lindsey Graham](#), who is also attending the security conference, said the rest of the congressional delegation was planning to delay its departure until Friday afternoon.

With McCain's absence and Sen. Susan Collins' opposition to Pruitt, the Oklahoma Attorney General's path to 50 votes is tight. But the expected support of Democrats Sens. Joe Manchin and Heidi Heitkamp should ensure that his nomination is approved.

## **The Hill**

<http://thehill.com/policy/energy-environment/319891-dem-sens-heitkamp-manchin-to-support-trump-epa-pick>

### **Dems Sens. Heitkamp, Manchin to support Trump EPA pick**

By Devin Henry 2/16/17, 12:09 PM

Two Senate Democrats on Thursday said they will vote for President Trump's nominee to lead the Environmental Protection Agency.

In a statement, Sen. Heidi Heitkamp (D-N.D.) said she supports Scott Pruitt's nomination to EPA administrator. A spokesman for Sen. Joe Manchin (D-W.Va.) said Manchin will also vote to confirm him.

"Once Mr. Pruitt is confirmed to lead EPA, I'll work to make sure EPA focuses on smart regulation and works with states and local communities to address issues like the unworkable Waters of the U.S. rule and the punitive final Clean Power Plan rules," Heitkamp said in a statement, noting two controversial Obama administration EPA rules.

"Though I have concerns about his commitment to a comprehensive energy strategy that includes renewables and his commitment to reduce emissions to protect our air and water, I'll work to hold Pruitt accountable and make sure North Dakota's interests are heard."

Both Heitkamp and Manchin are expected to face tough re-election fights in conservative, energy-producing states next year. Heitkamp said Thursday she will also support Trump's picks to lead the Interior and Energy Departments.

The Democrats' support for Pruitt solidifies his standing ahead of a confirmation vote expected on Friday.

Though Sen. Susan Collins (R-Maine) came out against Pruitt's nomination on Wednesday, that defection will be offset by support from Heitkamp and Manchin, and no other Republican has said they will vote against Pruitt.



The Senate kicked off floor debate on Pruitt's nomination on Thursday, with Republicans hailing him as a potential agent of change at the EPA.

"Over the past eight years the political leaders of the EPA have taken actions that have undermined the American people's faith in the agency," Sen. John Barrasso (R-Wyo.) said.

As Oklahoma's attorney general, Pruitt "worked to protect the environment in his state while also working for the benefit of the people," Barrasso said.

But Democrats say Pruitt will erode the agenda's agenda and favor fossil fuel interests over that of the environment, noting his career suing the EPA during his tenure in Oklahoma.

"Never have I been forced to consider a candidate to lead the EPA who as been so focused throughout his career on crippling the agency he now hopes to lead," Sen. Tom Carper (D-Del.) said.

## **InsideEPA**

<https://insideepa.com/daily-news/epa-staff-takes-dim-view-planned-trump-visit-agency-headquarters>

### **EPA Staff Takes Dim View Of Planned Trump Visit To Agency Headquarters**

By Dawn Reeves 2/16/17

President Donald Trump's planned visit to EPA headquarters to sign executive orders (EO) scaling back the agency's climate change and other work is prompting questions about whether the president and Administrator-nominee Scott Pruitt might seek to require staff to attend, further deflating staffers' low morale.

One former EPA official asks, "Can Trump order EPA staff to be in the room?" The source says that career staff have been largely paralyzed by the Trump transition and beachhead teams, which imposed a communications freeze on headquarters officials, criticized agency scientists and hobbled work across program offices.

One Trump administration source told *InsideEPA/climate* Feb. 14 that the planned visit -- which will come after Pruitt is confirmed by the Senate -- is aimed at sending a message that Pruitt is ready to get to work on core clean air, water and waste issues, rather than climate change. The

message could “suck the air out” of the room.

The Senate is expected to have enough votes to confirm Pruitt, with a final vote occurring as soon as Feb. 17. In that scenario, Trump's visit to the agency could occur the following week, the source says.

The source would not share the content or number of EOs to be signed, but they are expected to dramatically scale back the agency's climate change work and could revoke former President Barack Obama's Climate Action Plan and direct the agency to begin revoking the Clean Power Plan greenhouse gas rule and the Clean Water Act jurisdiction rule.

The former EPA official says agency staff would prefer not to attend what may be a command performance with the new administrator and the new president because neither have signaled support for the agency's mission.

Also, this source notes that the beachhead team is successfully scaring agency employees into keeping quiet by holding closed-door meetings with small numbers of staff and giving them orders -- such as to begin removing climate-related information from the agency's website.

The team is reportedly not putting many orders in writing, so they cannot be sought later under the Freedom of Information Act, the source says. Also, the meetings are intentionally small so administration officials can identify staff if information is leaked.

The source says this practice is having an extremely chilling effect on the agency's workforce, as did a transition team request in the waning days of the Obama administration for a list of names of every employee that could post to an EPA social media account.

Trump campaigned on a platform of getting rid of EPA entirely, or “leaving a little bit of it.” Pruitt has made a career of suing the agency over myriad regulations during his tenure as Oklahoma attorney general. And former EPA transition leader Myron Ebell advocates deep agency budget cuts and radical staff reductions from 15,000 to 5,000.

More than 450 former EPA employees signed a Feb. 6 letter to the Senate objecting to Pruitt, including some politically appointed regional administrators along with career scientists, attorneys, analysts and others.

Also, about 30 Region 5 staffers joined a Feb. 6 anti-Pruitt protest during their lunch hour, according to a Chicago Tonight report. EPA protestors included chemist Wayne Whipple, who said, “Please, keep us doing what we're doing. Let us do what we do.”

EPA spokesman Doug Ericksen sought to downplay the Chicago protest, telling Reuters that “employees have a right to take action on their private time.” But top EPA career officials have also cautioned the agency to remember they must comply with Hatch Act ethical requirements that largely prohibit them from engaging in political activity as part of their work, according to a Feb. 3 email to all staff obtained by *Inside EPA*.

The *Reuters* article notes that Trump has also vowed to cut oil, gas and coal rules, though he says he can do so without compromising air and water quality.

## **Intentional Provocation**

But EPA employees are worried that the bedrock air and water protections are under dire threat, and that Trump and Pruitt will impose dramatic budget and staff cuts.

The administration is said to be considering shuttering the agency's independent enforcement office and shuttling enforcement duties into the program offices -- a move that has already faced some pushback.

Some EPA staff are considering how to “slow-walk” Trump's orders, though one agency lawyer says that most employees will comply with them, short of catastrophic actions. “Unless there's an abject abandoning of EPA's role in the world, we'll do what we're told to do,” Region 5 attorney Nicole Cantello told the New York Times Feb. 11.

But a Trump visit to EPA headquarters to target agency authority and limit the scope of its work would be viewed as an intentional provocation by many agency staffers.

The former EPA official compares it to Trump's visit to CIA headquarters Jan. 21, noting news reports that Trump brought supporters to the meeting to sit alongside agency employees to cheer during his speech.

However, unlike the planned EPA visit, the CIA event was seen as somewhat of an olive branch, after Trump harshly criticized the intelligence community for investigating potential Russian hacking in the election and his potential ties to the country.

“There is nobody that feels stronger about the intelligence community and the CIA than Donald Trump,” Trump said that day, according to the *Washington Post*. That report also noted the event was the first in what aides said would be a series of visits by Trump to federal agencies. Much of his remarks complained about media coverage of the size of his inaugural crowd the prior day.

The CIA visit was on a Saturday and staff was not required to attend. Many did not, though *CBS News reported* that Trump brought his own cheering crowd to the speech.

Government officials pushed back against the perception that the CIA workforce was cheering for Trump, and said the first three rows were made up of campaign supporters, though that charge was later denied by White House press secretary Sean Spicer, who said there were no “Trump or White House folks” in the first rows. But then Spicer's account was called inaccurate by a source who helped plan the CIA visit, according to *CBS*.

### **A 'Real Nice Touch'**

In response to a question from *Inside EPA* on whether employees could be required to attend a Trump meeting, an agency spokesperson says, “While EPA would welcome a visit by President

Trump, there is not a visit scheduled at this time. The President's schedule is managed by the White House."

The former EPA official argues that federal workers have integrity and are required to take an oath to uphold the Constitution, and that EPA career staff will be unlikely to voluntarily attend or applaud Trump or Pruitt.

One industry lawyer says sarcastically that the planned visit is a "real nice touch. Staff will love this."

Sierra Club issued a statement in response to the planned EOs, saying, "Undermining the international leadership the U.S. has shown on climate action would be an enormous mistake of historic consequence. If Trump does follow through it would mean he is declaring open season on our air, water and climate while further destabilizing our role in the world."

Meanwhile, Acting EPA Administrator Catherine McCabe flagged "challenges" ahead of Pruitt's expected confirmation in a Feb. 13 video message to staff, where she discussed Trump's hiring freeze and a separate EO imposing a government-wide requirement that two regulations be withdrawn for every new one that is issued.

"The freeze on hiring is already creating some challenges to our ability to get the agency's work done," McCabe said in the message, adding that the freeze has raised many questions that she is still trying to answer.

The former EPA official adds that little work appears to be getting done or at least is not getting communicated to the public.

EPA headquarters has not posted a press release to its website since Jan. 19, which is also the same date that the agency's Facebook page and numerous Twitter feeds were last updated. The agency's 10 regions have been sending press releases, mostly regarding relatively minor matters.

However, the agency did issue its draft annual greenhouse gas inventory Feb. 14, with plans to issue a final version by April. That report is required to be issued by statute. A notice about the report's availability was published in the *Federal Register*, but EPA did not publish a press release about it.

## **TechCrunch**

<https://techcrunch.com/2017/02/16/the-epa-posted-a-backup-of-its-website-dated-just-before-inauguration-day/?ncid=rss>

### **The EPA posted a backup of its website dated just before inauguration day**

By Devin Coldewey 2/16/17

In what could either be a paperwork-saving decision or a thinly veiled gesture of defiance, the Environmental Protection Agency has put a mirror of its own website online — a “snapshot” from January 19, the day before Trump was sworn in as president.

The backup appeared yesterday at a subdomain of EPA.gov, and since then has appeared under the “Frequently requested information” heading in the live webpage’s FOIA section. It appears that enough FOIA requests were submitted for various pieces of the website, or the entire site itself, that the agency decided to just put up a full mirror.

A banner at the top of the page recalls the one found on the archived Obama WhiteHouse.gov:

This website is historical material reflecting the EPA website as it existed on January 19, 2017. This website [i.e. the snapshot] is no longer updated and links to external websites and some internal pages may not work.

It’s still technically an EPA website, and so could be removed through executive action, but the fact that it was much-requested via FOIA should make it pretty robust against takedown.

That the mirror is dated January 19, though, can hardly be a coincidence. The Trump administration is openly hostile to the EPA, and its ascendance may very well mark the agency's final days — at least as the agency it's been for the last few decades. Early indicators, such as clamping down on any mention of climate change, are not reassuring.

Scott Pruitt, the man nominated to lead the agency, has sued it a dozen times (some suits are still open) and would almost certainly put up no resistance to its reduction or elimination. His confirmation vote is fast approaching, but at least one Republican Senator (Maine's Susan Collins) has announced her intention of voting against him.

I've contacted the EPA for more details on the circumstances surrounding this snapshot.

### **The Hill**

<http://thehill.com/policy/energy-environment/319852-senate-advances-trumps-epa-pick>

### **Senate advances Trump's EPA pick**

By Timothy Cama 2/16/17

The Senate is moving forward with Oklahoma Attorney General Scott Pruitt's nomination to lead the Environmental Protection Agency (EPA).

The chamber voted 54-46 to advance Pruitt's nomination, clearing the simple majority needed. Sens. Heidi Heitkamp (D-N.D.) and Joe Manchin (D-W.Va.) were the only Democrats to vote in favor of cloture on Pruitt's nomination, joining all 52 Republicans.

Sen. Susan Collins (R-Maine) on Wednesday became the only Republican senator to announce that she would oppose Pruitt, though she voted in favor of cloture for his nomination on Thursday.

Collins — who has voted against other Trump Cabinet nominees — told a local Maine radio station that she had concerns about how Pruitt would be able to run an agency he had spent much of his time as Oklahoma's top lawyer opposing and suing.

"His actions leave me with considerable doubts about whether his vision for the EPA is consistent with the agency's critical mission to protect health and the environment," she said.

Pruitt's vote went forward despite a failed 11th hour effort by Democrats to delay it because of a pending court case involving email records.

Democrats on the Environment and Public Works Committee, led by Sen. Tom Carper (D-Del.), said that emails Pruitt's office is likely to release publicly soon may be important in considering his nomination.

"These records are needed for the Senate to evaluate Mr. Pruitt's suitability to serve in the position for which he has been nominated," the Democrats wrote in a letter to Majority Leader Mitch McConnell (R-Ky).

But McConnell praised Pruitt on Thursday as a "welcome change" from the Obama administration, which he argued negatively impacted coal families in his home state of Kentucky.

"Pruitt thinks it's time for the EPA to get back clean air and clean water business," he said. "And to do so with an appreciation for the complexity of our modern world, with awareness of the broader economy, with compassion toward those impacted."

Thursday's vote sets up a final vote as early as Friday.

McConnell warned senators Wednesday that they should expect to stay in session through Friday afternoon, but a group of roughly a dozen senators are expected to leave for a security



conference in Germany.

## **Gizmodo**

<http://gizmodo.com/the-epa-just-posted-a-mirror-website-of-the-one-trump-p-1792430343>

### **The EPA Just Posted a Mirror Website of the One Trump Plans to Censor**

By Matt Novak 2/16/17

As the Trump regime has taken power, a lot of valuable information from government agencies has been erased. Useful info is being scrubbed from the USDA, the Department of Education, and there are clear indications that the EPA is next. But we now have a snapshot of what the EPA website looked like the day before Trump took office. And it's all thanks to FOIA requestors.

The Environmental Protection Agency (EPA) has come under unprecedented threat in recent weeks. Republicans have gone so far as to introduce a bill that would eliminate the EPA entirely. But people are pushing back. And after individual efforts to backup the website, along with plenty of Freedom of Information Act (FOIA) requests, the EPA just posted a snapshot of the site as it existed on January 19, 2017, the day before Trump was sworn in.

It's unclear how many FOIA requests were filed for the site, but we know that it was at least three. Under federal law, agencies are required to publicly post any documents that get three or more requests. "Documents" is a catchall term under FOIA that can include anything from videos to websites. If just one person makes a request, those documents are only sent to the person who asked for it and it's up to that party to make it public.

"The genius of this approach is that, because they were required by federal law to post the mirror site (because it's a frequently requested record), it's harder now to force it down," writer and anthologist Russ Kick told Gizmodo over email. Kick is the founder of The Memory Hole, a one-man operation that posts government documents.

Kick wasn't one of the requestors in this case, but he noticed it this morning after the EPA

posted the mirror site yesterday.

“I must admit that I didn’t file a FOIA request for the site. That tactic hadn’t occurred to me, but I love it,” Kick said.

The EPA’s mirror website makes it clear that it’s just a snapshot, and that links could very well die at some point. But it’s better than nothing.

“This is not the current EPA website,” the site reads. “To navigate to the current EPA website, please go to [www.epa.gov](http://www.epa.gov). This website is historical material reflecting the EPA website as it existed on January 19, 2017. This website is no longer updated and links to external websites and some internal pages may not work.”

Unfortunately, there are elements of the website that aren’t backed up because of size constraints. Those elements can still be found at the links below:

AirNow images: available at <https://cfpub.epa.gov/airnow/index.cfm?action=airnow.main>

Radiation Network graphs: available at <https://www.epa.gov/enviro/radnet-overview>

Historic Air Technology Transfer Network information: available at <https://www.epa.gov/technical-air-pollution-resources>

EPA’s Searchable News Releases: available at <https://www.epa.gov/newsreleases/search>

Coincidentally, I filed my own FOIA request back in September to see if the EPA has purchased any new domain names from September 2015 to September 2016. The agency told me that it hadn’t, but I guess they’ve purchased at least one since then: <https://19january2017snapshot.epa.gov/>. (Update: As has been pointed out to me, it’s just a subdomain of EPA. I didn’t look closely enough and am an idiot.)

I guess it's time for everyone to submit FOIA requests for every federal agency's website if we want to save data before Trump can get his cheeto-tinted hands all over them.

### **Bloomberg BNA**

[http://esweb.bna.com/eslw/1236/split\\_display.adp?fedfid=105705706&vname=ccrnotallissues&wsn=49506760](http://esweb.bna.com/eslw/1236/split_display.adp?fedfid=105705706&vname=ccrnotallissues&wsn=49506760)

### **EPA Girds for Pruitt Arrival as Democrats Continue to Fight**

By Brian Dabbs 2/16/17

Scott Pruitt may take the reins of the Environmental Protection Agency Feb. 17, the agency's acting administrator Catherine McCabe told colleagues in a video posted publicly.

That projection aligns with Senate Republicans' repeated commitments to confirm the controversial nominee by the end of this week before departing for a roughly 10-day recess.

Still, the precise timing of a confirmation vote remains murky, and Democrats continue to push for last-minute disclosures of the Oklahoma attorney general's correspondence with fossil fuel companies. Those disclosures would allow lawmakers to fully evaluate the nominee, the Democrats indicated in a Feb. 15 letter to an Oklahoma district court judge.

The judge, Aletia Haynes Timmons, will convene an emergency hearing Feb. 16 to assess a suit filed against long-delayed release of attorney general's office e-mails with Murray Energy Corp. and Devon Energy Corp., among other companies Ctr. for Media and Democracy v. Pruitt, Okla. Dist. Ct., CV 2017-223, 2/7/17.

### **Democrats Aim to Join Suit**

The Center for Media and Democracy and the local chapter of the American Civil Liberties Union filed the suit, citing a more than two-year delay of the release of the e-mails. In recent

days, the attorney general's office provided more than 400 of those e-mails, but the plaintiffs say hundreds if not thousands more should be disclosed.

Senate Environment and Public Works Democrats, led by ranking member Tom Carper (D-Del.), urged Timmons to force full disclosure of the e-mails and asked to formally participate in the case as amici advisers.

“Mr. Pruitt has not been forthcoming with information many of us believe to be necessary to evaluating his nomination fully,” said the Democrats before providing a range of information they allege shows improper ties between Pruitt and the fossil fuel industry. “We are providing this information to the court today because we have concluded plaintiff's pending Open Records Act requests may be the only means by which the Senate and general public can obtain in a timely manner critical information about Mr. Pruitt's ability to lead the EPA.”

Committee Democrats boycotted two nomination votes on Pruitt in early February, but Republicans suspended committee rules and advanced the nomination to the Senate floor. Following possible confirmation Feb. 16 of Rep. Mick Mulvaney (R-S.C.) as Office of Management and Budget chief, Senate Republicans have vowed to move then to Pruitt's confirmation.

## **McCabe Concerns**

Meanwhile, McCabe told agency employees to prepare for a new wave of EPA personnel.

“We expect to see Mr. Pruitt here at EPA as early as this Friday. You will also see new political appointees arriving at EPA Friday or in the coming weeks,” she said.

The tumultuous presidential transition, however, is taking its toll on the agency, McCabe added. “The freeze on hiring is already creating some challenges to our ability to get the agency's work done,” she said. “We also recognize that the freeze on regulations raised many questions.”

The Trump administration is tentatively scheduled to lift the regulatory freeze in March, while the hiring freeze may wrap up the following month. Former and current EPA officials fear the hiring freeze could persist beyond that date. Critical functions, such as scientific research and grant administration, would suffer as a result, those officials have told Bloomberg BNA.

McCabe didn't specify the particular areas in which the EPA is currently falling short.

### **Bloomberg BNA**

[http://esweb.bna.com/eslw/1236/split\\_display.adp?fedfid=105705697&vname=ccrnotallissues&wsn=49506710](http://esweb.bna.com/eslw/1236/split_display.adp?fedfid=105705697&vname=ccrnotallissues&wsn=49506710)

### **Carmakers' Plea for Fuel Economy Review Sets Stage for Showdown**

By David Welch, Ryan Beene, and John Lippert 2/16/17

Automakers enjoying lucrative sales of trucks and sport utility vehicles are hoping President Donald Trump makes good on his vows to deregulate. Environmental groups are saying fuel efficiency standards won't be watered down without a legal challenge.

"We'll see him in court," Dan Becker, director of the Safe Climate Campaign, said of the group's planned response if the rules are revisited. "There are a lot of reasons to keep the standards in place and there will be a fight."

Eighteen auto industry executives sent a letter to Trump on Feb. 10, asking him to reinstate an Environmental Protection Agency review of fuel economy regulations through 2025 that they say was unfairly cut short during the final days of the Obama administration. That letter could be the opening act in a potential drawn-out battle in Washington and in U.S. courts as environmental groups consider suing to stall or derail any effort to lower the targets.

"The primary issue here is we do not see any kind of technical basis for weakening the standards," said Roland Hwang, director of the energy and transportation program at the Natural Resources Defense Council. "We're looking at our options," he said, declining to say definitively whether the environmental advocacy group would file litigation.

## **Carmaker Action**

The issue auto executives raised in their letter was the review process for the nation's fuel efficiency standards. The companies and then-President Barack Obama struck a deal in 2011 to double average fuel economy of vehicles to 54.5 miles per gallon by 2025, with the caveat that a mid-term review would determine whether the standards for the final years of the program were feasible.

Automakers say falling gasoline prices have squelched demand for the most fuel-efficient vehicles, making achieving the standards more difficult. Just a week before Trump took office, the EPA said it had concluded its review more than a year ahead of schedule and the rules didn't need to be changed.

Oklahoma Attorney General Scott Pruitt, Trump's nominee to lead the EPA, told a Senate panel in January he planned to review the EPA's final determination that the 2025 auto rules should remain intact.

If the EPA revisits the mid-term review, it won't necessarily come to a different conclusion than the one reached in Obama's final days in office. That decision was the culmination of a rules evaluation that began last summer with the publication of a more than 1,200-page Technical Assessment Report that examined costs, technology effectiveness and other aspects of the standards.

## **Thorough Process**

Hwang called the review “one of the most thorough decision-making processes I've seen by an agency.” The NRDC views automakers’ request to re-open the review as a move to “politically meddle with what should be a science-based decision.”

“I don't know what information they could bring to the table that hasn't been brought to the table already,” he said.

Trump's push to ease regulatory burdens may create a window of opportunity for carmakers. The letter, signed by chief executives including Mary Barra of General Motors Co., Mark Fields of Ford Motor Co. and Sergio Marchionne of Fiat Chrysler Automobiles NV, said that “ignoring consumer preferences and market realities will drive up costs for buyers and threaten future production levels.”

Automakers have only asked for the mid-term review to be reinstated. It's possible that Trump's EPA could seek major changes, such as insist on weaker federal rules so that carmakers have more cash to invest in the zero-emission cars they're required to sell in California.

## **What's Next**

Enacting new rules altogether would be a lengthy process. If Trump does initiate a new round of rule-making on the EPA's 2022-2025 greenhouse gas standards, he's likely to do so as a joint exercise with the National Highway Traffic Safety Administration, which will then be writing fuel economy standards for those same years, said Jeff Holmstead, a former assistant administrator at the EPA and now a partner at Bracewell LLP in Washington.

“I don't think they'd completely eviscerate those regulations,” Holmstead said. “But there are probably ways to make them more flexible and reduce the cost.”

A formal rule-making process, complete with public notices and comment periods, would probably take at least a year. To change the rules, Pruitt would also need to provide a formal explanation on why he's scrapping Obama's so-called final determination.

“While the auto industry might welcome lower fuel efficiency standards, environmental groups and consumer advocates almost certainly would sue,” said David Uhlmann, director of the University of Michigan's Environmental Law and Policy Program. “The reviewing court is not likely to view favorably the fact that a new administration tried to do a 180-degree turn from the

previous administration” and will “want to be assured there's a rational basis for the change.”

## **Politico Pro**

<https://www.politicopro.com/tipsheets/morning-energy/2017/02/debate-begins-on-pruitt-nomination-today-021417>

### **Debate begins on Pruitt nomination today**

By Anthony Adragna 2/16/17, 5:45AM

**DO IT, PRUITT!** The Senate is set to advance Scott Pruitt's nomination to run EPA this morning, but Democrats say they plan to delay a final vote as long as they can. Senate Majority Leader [Mitch McConnell](#) has asked everyone to stick around for a Friday afternoon confirmation vote — potentially complicating the travel plans for several senators who had been planning to leave tonight for a codel to the Munich Security Conference. Pruitt will ultimately be confirmed, but not before Democrats highlight their strenuous objections to his record. “I think we’ll use our 30 hours” of debate time, Sen. [Ben Cardin](#) told ME. “I don’t think we expect at this particular moment the outcome to be in doubt. I don’t think it is in doubt. But I think we’ll want to articulate our concerns. It’s been effective in at least putting the nominee on notice and energizing the private sector to hold the nominee accountable to our environmental objectives.”

**What about his emails?** An Oklahoma state judge will hear a lawsuit today saying Pruitt has delayed releasing or withheld emails regarding his dealings as state attorney general with fossil fuel and conservative groups. Watchdog group Center for Media and Democracy argues Pruitt’s office had yet to fully respond to a half-dozen requests dating as far back as January 2015. His office released 411 emails on Friday, but CMD said that was insufficient. The group questioned how Pruitt’s office narrowed those emails down from 3,000 it previously said it was reviewing, complained Pruitt’s office did not provide any emails from the past two years and argued its request should have turned up emails previously reported in The New York Times. The hearing, which is not webcast, is before Judge Aletia Haynes Timmons of the District Court in Oklahoma County at 3 p.m. local time. That will be a few hours after the Senate advances his nomination — a cloture vote on Pruitt is scheduled immediately following the 10:30 a.m. confirmation vote for Rep. [Mick Mulvaney](#) to run OMB.

**How much do Dems want them before he’s confirmed?** Enough to send a [letter](#) Wednesday to Timmons urging her to order the emails released. “Without court intervention, we fear the Attorney General’s office will continue to use the Open Records Act review process to shelter



Mr. Pruitt from scrutiny, and not provide access to information the Senate and the public needs,” wrote six Environment and Public Works Committee Democrats. They add getting the emails would still be useful for oversight, even if they are released after Pruitt is confirmed. Five EPW Democrats will call on McConnell to delay Pruitt's vote until the conclusion of the hearing during a 12:00 p.m. press conference today.

**Republican defection:** At least one Republican senator, Susan Collins of Maine, won't support Pruitt's nomination, although that is unlikely to keep him from getting confirmed. "I have significant concerns that Mr. Pruitt has actively opposed and sued EPA on numerous issues that are of great importance to the state of Maine, including mercury controls for coal-fired power plants and efforts to reduce cross-state air pollution and greenhouse gas emissions," she said in a statement. "His actions leave me with considerable doubts about whether his vision for the EPA is consistent with the Agency's critical mission to protect human health and the environment."

### **E&E News**

<http://www.eenews.net/climatewire/stories/1060050167>

### **The countdown is on. Pruitt to make a 'negative' entrance**

By Emily Holden, Niina Heikkinen, and Kavya Balaraman 2/16/17

Scott Pruitt could be on the ground at U.S. EPA as early as tomorrow, with the Senate set to confirm his nomination as the agency's administrator tomorrow afternoon.

The Republican Oklahoma attorney general, who has challenged numerous EPA regulations in court, is expected to work quickly toward reversing major rules established by the Obama administration. Finalizing those rollbacks could take time.

Once Pruitt is in place, President Trump could take a number of symbolic steps against his predecessor's signature climate achievements. He could issue executive orders declaring that climate standards for power plants are illegal or announce his intent to exit the international agreement to curb greenhouse gas emissions.

Before that can happen, Pruitt and other political appointees will have to be sworn in and begin the delicate process of persuading scientists and other civil servants to share a sharply altered outlook for the agency under Trump.

That could start this week, acting Administrator Catherine McCabe told employees in a video message Tuesday. The first actions by the incoming political class could set the tone at EPA, where staffers are already nervous about potential budget and staffing cuts.

"It's not a great situation right now," said Christine Todd Whitman, who was EPA administrator under George W. Bush. "Those who are eligible for retirement are certainly looking at that as an option. There's no fun working in a negative environment."

Whitman said she worries that the American public won't understand what is happening at EPA until the next major disaster.

"There's so much coming out that needs to be sorted out with the administration right now," she said. "EPA's a little bit a victim of its own success, because people just expect to have clean air and clean water."

Nicole Cantello, an EPA lawyer based in Chicago and a union steward with American Federation of Government Employees Local 704, said last week that the "bad news is coming fast and furious." That's why EPA staffers in Region 5 recently protested publicly.

Looming budget cuts are a widespread worry. Cantello said that severe defunding would have prevented EPA from responding to the drinking water contamination crisis in Flint, Mich., and oil spills in the Gulf of Mexico. EPA's case against Volkswagen AG for cheating on emissions tests "would never have been known about," she said.

Cantello works on water quality in the Great Lakes region, a multistate issue that must be handled by the federal government. She worries that those efforts will suffer with changes at EPA, and she said her co-workers are concerned that the agency's mission could be curtailed or "shackled completely."

## **Roller-coaster tweets**

Staff members at EPA headquarters expressed a mix of emotions as they left their Washington, D.C., office yesterday evening, in the final hours before their new boss steps into the building.

"It's copacetic; nothing really much has changed, at least on my end," said one man who said he works at EPA but declined to give his name or department.

Other staff members said work at the agency has been proceeding as normal, although there is some doubtfulness about the future of certain projects. One EPA employee in the Office of Atmospheric Programs who gave only a first name, Robert, said people are concerned about potential budget cuts for contractors and travel.

Everyone seems to be anticipating what Pruitt is likely to say at his first all-hands meeting. And many are watching Trump's tweets, which have the power to lift, and sink, people's moods.

"Now there's talk of about a 50 percent cut in extramural resources, so there is planning for that, all the way from 10 to 50 percent [cuts], so people are pretty worried," Robert said. "It's definitely mixed morale, varied day by day based on the latest spouting off from the White House."

There is also talk of staff cuts and rumors that employees would have to take two weeks of unpaid leave this year, he said.

"There are a lot of even more concerned people who are in the climate change group; I mean, obviously, they are more in the crosshairs," Robert said.

Whitman said one indicator of how Pruitt will run the agency is how he treats science.

"From what I've heard so far, those who have been parachuted in to do the prep work for Scott Pruitt are asking questions that indicate a great skepticism for the quality of the science," Whitman said.

Doug Ericksen, the temporary head of EPA communications, said so far, there are no specific plans to change staffing levels, and he downplayed the impact of the recent hiring freeze, which prevents the agency from replacing those who are leaving.

"That would be up to the administration, the White House and the Congress in terms of overall funding to all the agencies," Ericksen said.

"I think we're just going to continue down the pathway of a smooth transition with a new administrator," he said. "He's going to be meeting with the career professionals here at the agency and working on putting his staff around him, kind of the usual stuff you would expect."

Last week, Ericksen acknowledged that the administration wanted to cut back on travel but declined to specify how much EPA might reduce those budgets.

### **Lax enforcement coming?**

Former EPA employees note that major changes may take a while to find traction. But there are bound to be some staffers who feel alienated by those efforts and leave.

Bruce Buckheit, who enforced environmental laws at the Justice Department and then was air quality director at EPA, was at the agency during the transition from the Clinton administration to the George W. Bush administration.

"They took until May or June to really start changing things," Buckheit said. "The first couple months, we were all kind of wondering what would happen, but it didn't happen overnight."

Buckheit worked under Whitman, who he said supported EPA's core mission, but he was forced to work with assistant administrators who did not. As things changed, Buckheit said, he stayed for a year because "Whitman said 'Hang in there; we'll get this right.'"

U.S. EPA administrator nominee Pruitt could see his Senate confirmation as early as tomorrow. Photo courtesy of C-SPAN.

As acting administrator, McCabe seems to be trying to reassure staff members, thanking them in Tuesday's video for their "continuing patience."

"We do recognize the transition has brought some challenges," she said, acknowledging that the hiring freeze and the halt on new regulations are causing some difficulties.

Congress will likely move to reduce EPA's budget, although Buckheit noted that might be hard because most of EPA's funds are "stovepiped" in grants to localities.

"Those people are going to want to keep their money," he said.

Sources have suggested that new EPA leaders might also limit enforcement work (E&E Daily, Feb. 9).

Sara Schneeberg, who worked in the general counsel's air office until 2015, started out in the agency's enforcement unit under the Reagan administration. The controversial EPA head at the time, Anne Gorsuch Burford, slowed enforcement action.

"In the general counsel's office, the lawsuits are running and the lawsuits are brought against the agency and you have to defend them," Schneeberg said. "But in the enforcement office, that's EPA's initiative. You go out and you sue people. But we were told you don't go out and sue people."

Schneeberg, who worked at EPA through many transitions, said this one "seems definitely the worst."

### **Pruitt worries one Republican**

The Senate vote tomorrow will mark the end of more than two months of opposition campaigns characterizing Pruitt as a fossil fuel lackey.

Environmental advocates, joined by Democratic senators and former agency officials, rallied yesterday evening in front of the Capitol. They carried signs saying "Pruitt the Polluter" and chanted "No hate, no fear; your climate denial's not welcome here."

Sen. Tom Carper (D-Del.) criticized Pruitt's record and suggested that his nomination is the first step toward shuttering EPA, a Trump campaign promise. Carper urged Senate leaders to delay Pruitt's confirmation vote until he releases his email correspondence with oil and gas industry interests.

"It's beyond me to understand why [Republicans] would not wait a week until we had full information," he said on the sidelines of the event. "Maybe they're fearful of the story they will tell," he added, referring to the emails.

Carper and Sen. Sheldon Whitehouse (D-R.I.) said Democrats would use all their floor time to oppose Pruitt's nomination.

"We are going to be extremely active on the floor and burn as much time as we possibly can," Whitehouse said. He added that he hopes Republicans will pay in the 2018 elections for hamstringing EPA.

"Our Republican friends are walking around looking at the ceiling tiles, pretending that they don't really see what's going on — because there is so much clout in this building from the fossil fuel industry," he said, pointing at the Capitol.

Senate Majority Leader Mitch McConnell (R-Ky.) said on the floor last night that a vote to proceed to Pruitt's confirmation will be held at 10:30 a.m. today. By tomorrow afternoon, the Senate could confirm Pruitt. He could be at his desk in EPA headquarters before sunset.

Pruitt has enough votes to be confirmed even if all Democrats oppose him. Only one Republican, Sen. Susan Collins of Maine, has said she will vote against him.

Collins, in an interview with Maine Public Radio, called Pruitt "an accomplished attorney with considerable knowledge about environmental laws," but she said she has concerns about how actively he has opposed and sued EPA.

### **E&E News**

<http://www.eenews.net/eedaily/stories/1060050159>

### **Senate GOP maneuvers to confirm Pruitt by tomorrow**

By Gerooge Cahlink 2/16/17

Senate Republicans are insisting U.S. EPA nominee Scott Pruitt will be confirmed by the end of this week, despite near-solid Democratic resistance and at least one GOP opponent.

Senate Environment and Public Works Chairman John Barrasso (R-Wyo.) said Pruitt would be confirmed by no later than tomorrow afternoon even if Democrats continue to force floor delays.

He said the vote could come earlier if members of the minority opt not to use all 30 hours of their allowed floor time to fight Pruitt.

Senate Majority Leader Mitch McConnell (R-Ky.) said last night: "All members should plan to stay here until complete consideration of the Pruitt nomination."

EPW Committee ranking member Tom Carper (D-Del.) promised Democrats would use all of the time to oppose the Oklahoma attorney general, whom they believe would push for a massive regulatory rollback at EPA. If Democrats stick with their plans, the Senate will be in for another overnight session tonight.

Carper suggested waiting until after a week to allow a federal court to possibly release emails related to his tenure as attorney general.

"Why wouldn't we wait a week to find out what story those emails told?" Carper asked yesterday evening. "Maybe they're fearful of a story they would tell."

### **Collins to oppose Pruitt**

Republican Sen. Susan Collins of Maine, one of the Senate's leading moderates, broke with her party yesterday and announced she would oppose Pruitt.

Collins told Maine Public Radio that Pruitt is a competent attorney and that she could support him for another post, but not EPA.

"Pruitt has actively opposed and sued the EPA on numerous issues that are of great importance to the state of Maine, including mercury controls for coal-fired power plants and efforts to



reduce cross-state air pollution and greenhouse gas emissions," Collins said.

"His actions leave me with considerable doubts about whether his vision for the EPA is consistent with the agency's critical mission to protect human health and the environment," she said.

Collins, whose move was largely expected, is the first and may be the only member of her party to break ranks on Pruitt.

With the GOP holding a two-seat advantage in the Senate and West Virginia Democrat Joe Manchin speaking positively about Pruitt, Collins' opposition won't derail the pick.

The Natural Resources Council of Maine praised Collins and the state's independent Sen. Angus King, who caucuses with Democrats, for protecting the state's natural resources by opposing Pruitt.

"We are counting on them to continue defending the health of Maine people, our nature-based economy, and safeguards for the clean air and clean water that define our state," said Lisa Pohlmann, the group's executive director.

FreedomWorks, the pro-fossil fuel group, mocked Collins' vote by sending out a sarcastic press release, which it called a template for when the moderate lawmaker opposes a conservative choice.

"The template reads, 'We're shocked — absolutely shocked — that Sen. Collins would oppose a conservative [insert policy or nominee]. It's a shame that Sen. Collins is once again aligning with herself far-left Democrats and special interests like [insert crazy liberal group(s)] to block a crucial [nominee/policy who/that] would accomplish conservatives' dream of [action/result]," the FreedomWorks statement said.

## **Mulvaney**

Debate on Pruitt will begin once the Senate approves Rep. Mick Mulvaney (R-S.C.) as director of the Office of Management and Budget. Votes are set for this morning.

In that post, the four-term lawmaker will oversee the crafting of President Trump's annual spending plans and coordinate rules across government.

Mulvaney, a fiscal hardliner who supported the last government shutdown and has raised doubts about human links to climate change, has drawn solid opposition from Democrats and concerns from some in the GOP, particularly over his willingness to call for cutting Pentagon spending.

One of those critics, Senate Appropriations Chairman Thad Cochran (R-Miss.), said yesterday he would support the nomination.

Senate Armed Services Chairman John McCain (R-Ariz.), who challenged Mulvaney over spending cuts at his confirmation hearing, said he would vote against him.

## **Perry, Zinke**

Congressional aides won't rule out voting on other nominees before Congress adjourns for a weeklong Presidents Day recess.

Less controversial picks, such as Energy secretary nominee Rick Perry, Interior secretary nominee Ryan Zinke and Commerce secretary nominee Wilbur Ross, could be confirmed quickly if the parties can come to a deal.

Perry's chances for a speedy approval might have dimmed a bit yesterday with the League of

Conservation Voters coming out strongly against his nomination.

"Perry's record of putting fossil fuel industry interests ahead of public health and environmental protections disqualifies him for the critical position of Secretary of Energy," LCV said, promising to score lawmakers on their vote.

Another pending nominee, Agriculture secretary pick Sonny Perdue, awaits a date for his confirmation hearing, which is seen as likely by the end of the month.

### **InsideEPA**

<https://insideepaclimate.com/daily-news/first-climate-case-under-trump-dc-circuit-hear-suit-over-hfc-rule>

### **In First Climate Case Under Trump, D.C. Circuit To Hear Suit Over HFC Rule**

By Abby Smith 2/15/17

Upcoming appellate court oral arguments in litigation challenging an EPA rule curbing hydrofluorocarbons (HFCs) could offer a crucial indication of where the Trump administration stands on regulating the potent greenhouse gases, as well as potential insight into how it could approach other key climate and environmental suits.

The U.S. Court of Appeals for the District of Columbia Circuit has scheduled Feb. 17 arguments in *Mexichem Fluor, Inc., v. EPA*. The suit challenges EPA's July 2015 rule removing several high global warming potential (GWP) HFCs from a list of acceptable chemicals under its Significant New Alternatives Policy (SNAP) program.

The rule is the first of several such measures to limit production and use of the refrigerants due to their climate change impacts. The Obama administration promulgated another SNAP rule in October 2016 delisting a second round of high-GWP HFCs.

The chemical companies that brought the lawsuit, Mexichem Fluor and Arkema, Inc., argue that EPA lacks Clean Air Act authority to regulate HFCs under the SNAP program, which was originally developed to limit ozone-depleting chemicals. Under that program, HFCs were approved as acceptable replacements for other refrigerants that caused significantly more damage to the ozone layer.

The companies also charge that, even if EPA does have SNAP authority to regulate HFCs, its rule was “arbitrary and capricious” because the agency failed to consider factors other than GWP when delisting the chemicals.

The upcoming arguments mark the first time the Trump Department of Justice (DOJ) will be charged with defending an Obama-era climate rule in court, and also the first arguments in an environmental lawsuit since Attorney General Jeff Sessions was confirmed.

In the first EPA suit to be argued under the Trump administration, DOJ on Feb. 10 defended an Obama EPA declaration that it has satisfied an air law requirement to regulate 90 percent of seven air toxics. But that defense was expected because the finding helps EPA avoid issuing new air toxics rules.

In the HFC litigation, it is unclear whether the new administration, which is largely hostile to climate policy, will switch positions during the arguments or potentially seek to settle the case.

The suit presents an interesting dynamic because industry is split. While Mexichem and Arkema are seeking to scrap agency's underlying authority over HFCs, large chemical companies Honeywell and Chemours are defending the agency and rebuking the other chemical firms' view of the air act as too restrictive.

Challengers “resort to tortured constructions of the law” to fight the regulation, primarily because they did not have the foresight to develop new chemicals in preparation for compliance, Honeywell and Chemours said in a June 10 brief supporting the rule.

One fact that could affect the Trump administration's view on the issue is that Mexichem and

Arkema are foreign firms while the companies backing the rule are domestic. Trump has often talked about boosting American companies through trade policy and other venues.

And broadly, industry groups, including chemical firms and many appliance manufacturers, support a “manageable” transition away from high-GWP HFCs, though they have sometimes criticized EPA's SNAP rules.

Industry sources have also noted that the pending litigation causes compliance uncertainty because some of the SNAP obligations began in January.

### **Trade Sanctions**

Industry also largely backs an international agreement struck last year that crafts a global phasedown of HFCs under the Montreal Protocol. However, the future of that deal -- known as the Kigali Amendment -- is now uncertain.

Chemical and appliance firms, as well as environmentalists, are urging Trump to back the Kigali deal, which would likely require ratification by the Senate. They also warn that not participating in the deal carries significant risks.

The Montreal Protocol includes strict trade sanctions banning the import of chemicals from countries that are not members of the deal and do not follow its phasedown requirements. Exporting chemicals to such countries would also be prohibited.

Thus, if the United States does not join the Kigali pact and does not follow its HFC restrictions, domestic chemical producers could not export HFCs to developing countries like India that are poised to be significant customers because the Kigali amendment does not require them to begin phasing down the substances until 2028.

U.S. appliance manufacturers might also be affected because they would be limited to

purchasing refrigerants from domestic suppliers -- a move that might boost prices.

The SNAP rules give the U.S. a path to meet Kigali's first phasedown step in 2019. That effectively protects against trade sanctions even if Trump administration decides not to move forward with the global deal.

But if the court overturns the SNAP rules, or if the administration ultimately weakens the regulations, the country could be in jeopardy of not meeting its first set of Kigali obligations.

### **'Square Peg, Round Hole'**

Much of the Feb. 17 oral arguments will likely focus on whether courts should grant deference to EPA's interpretation that its SNAP authority allows it to limit HFCs.

Mexichem and Arkema charge that EPA disregarded the bounds of the SNAP program as set by air act section 612 to meet the HFC reduction goal in President Barack Obama's Climate Action Plan.

“In short, EPA has pounded the square peg of the President's Climate Action Plan into the round hole of [section] 612 and the SNAP regulations. In doing so, the Agency has produced a rarity -- an air emissions regulation where the significance of risk, amount of emissions, extent of controls, and actual effects on the atmosphere are irrelevant,” Mexichem and Arkema wrote in their March 2016 opening brief.

The firms charge EPA lacks authority to regulate HFCs under the statute “without Congress's authorization.” Congress also would have to act, they say, to grant EPA authority to craft rules to implement the Kigali deal.

They also argue that EPA's interpretation of section 612 as allowing it to continue direct replacement of future generations of chemicals is “astonishingly expansive” and “far removed

from the comparatively modest purpose of the provision -- to ensure that ozone-depleting substances are replaced with safe alternatives as they are phased out.”

But EPA and its supporters say petitioners' interpretation of the statute is too restrictive and would inhibit EPA's ability to meet the SNAP program's requirement that it update the list of acceptable chemicals to reflect those that pose the lowest overall risk based on a variety of factors, including “human health and the environment.”

“To hold otherwise, as Petitioners advocate, would disregard Congress's mandate that EPA consider risks to human health and the environment when regulating alternatives to ozone-depleting substances and would stand in tension with settled principles of administrative law regarding an agency's authority to reconsider prior decisions,” the Obama DOJ wrote in a May brief defending the rule.

Honeywell and Chemours also argue that restricting the agency's ability to continually update the list of acceptable and unacceptable chemicals “would stifle the very innovation Congress sought to promote and forever insulate even the most harmful chemicals from being removed from the list of acceptable alternatives, long after industry has invented better substitutes that pose lower risks to human health and the environment.”

In addition, the Natural Resources Defense Council in a June 10 brief argued that Mexichem and Arkema could not point to any specific statutory language that restricts EPA's power to regularly update its lists of acceptable and unacceptable chemicals.

The petitioners also oppose the rule on several other grounds, including that EPA did not adequately consider energy efficiency in its SNAP rule decisions, and that the agency neglected to properly articulate its reasoning for the GWP limits.

DOJ, however, argued that EPA determined which chemicals to delist based on the SNAP program's “comparative risk framework” -- of which environmental impacts like GWP are only one factor. “Petitioners' dissatisfaction with that analysis should not be confused with a failure to perform it,” DOJ wrote.

Kevin McGonagle

Office of Media Relations Intern

U.S. Environmental Protection Agency

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[mcgonagle.kevin@epa.gov](mailto:mcgonagle.kevin@epa.gov)

Katherine So

Office of Media Relations Intern

U.S. Environmental Protection Agency

Telephone: (202)-564-4511

[so.katherine@epa.gov](mailto:so.katherine@epa.gov)



**To:** Schnare, David[schnare.david@epa.gov]  
**Cc:** Benton, Donald[benton.donald@epa.gov]; Flynn, Mike[Flynn.Mike@epa.gov]; Allen, Reginald[Allen.Reginald@epa.gov]  
**From:** Reeder, John  
**Sent:** Tue 2/14/2017 2:34:42 AM  
**Subject:** Re: Pruitt oath

And maybe the I.D., set up email. Wld be nice to clear that off.

Sent from my iPhone

> On Feb 13, 2017, at 8:18 PM, Schnare, David <schnare.david@epa.gov> wrote:  
>  
> Will be at 2 pm Friday. Jackson will talk to Pruitt tonight to see if he wants to do anything on Friday. I suggested we do PSD and an informal discussion of the major issues list. We then do day one on Tuesday.  
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**To:** Benton, Donald[benton.donald@epa.gov]  
**Cc:** Schnare, David[schnare.david@epa.gov]; Actadmmccabe, Catherine17[Actadmmccabe.catherine17@epa.gov]  
**From:** Flynn, Mike  
**Sent:** Mon 2/13/2017 12:59:39 PM  
**Subject:** Follow-up on Climate Leadership Awards  
Climate Leadership Awards 2 3 2017 v2.docx

Don,

In response to your inquiry, we've followed up on your concerns regarding two individuals slated to receive the Climate Leadership Awards. First, one of the two individuals is not an elected official: Jairo Garcia of Atlanta is a municipal employee (the Director of Climate Policies and Renewables in the Atlanta Mayor's Office) and therefore would not raise potential Hatch Act concerns.

We checked with OGC regarding any potential Hatch Act concerns with Eduardo Garcia, who is an elected Assemblyman in the State of California. After reviewing the Climate Leadership Awards criteria and review process, OGC sees no Hatch Act (or other) concerns with recognizing Mr. Garcia with the Individual Leadership Award. Given that conclusion and our earlier discussion, we will proceed with giving Mr. Garcia the award but include language that is clear that he cannot use his award from EPA in connection with his reelection. Justina Fugh of OGC has articulated (see message below) that he could list the award as part of his biographical information or otherwise display the award, but he should not use it to indicate in any way that EPA or its employees support his candidacy for reelection.

I've attached the summary information about EPA's participation at the Climate Leadership Conference that we shared earlier for your reference.

Mike

*Mike Flynn*

*Acting Deputy Administrator*

*U.S. Environmental Protection Agency*

*202-564-4711*

**From:** Dunham, Sarah  
**Sent:** Friday, February 10, 2017 10:36 AM  
**To:** Connors, Sandra <[Connors.Sandra@epa.gov](mailto:Connors.Sandra@epa.gov)>  
**Subject:** FW: follow up

Begin forwarded message:

**From:** "Fugh, Justina" <[Fugh.Justina@epa.gov](mailto:Fugh.Justina@epa.gov)>  
**Date:** February 8, 2017 at 6:27:33 PM EST  
**To:** "Krieger, Jackie" <[Krieger.Jackie@epa.gov](mailto:Krieger.Jackie@epa.gov)>  
**Cc:** "Harvey, Reid" <[Harvey.Reid@epa.gov](mailto:Harvey.Reid@epa.gov)>  
**Subject:** RE: follow up

Hi there,

I read through the criteria for the Climate Leadership Awards that you sent me yesterday, and this note confirms our conversation with Reid Harvey yesterday afternoon. Your awards program had established written criteria that are not dependent upon any political affiliation (which would of course violate the Hatch Act). It appears that your office collaborates with internal and external partners to review applications for the award, although EPA makes the final selection. This year, the proposed recipient for the individual leadership award is a California state assemblyman. In reviewing the list of former recipients, your office has once before bestowed this honor upon an elected official but does not consistently or even frequently done so. There is no evidence to suggest that EPA selected this recipient based on or even influenced by his political party, so I concluded that there was no Hatch Act issue for your office to give the award to this assemblyman (or any other elected official, for that matter).

You also asked whether EPA could give an award to an individual or entity who may later use that award for publicity purposes. I assured you that we can. In the Standards of Ethical Conduct for Employees of the Executive Branch, there are specific provisions regarding misuse of position and endorsement. We are permitted under an exception to allow the use of our government position, title or authority to endorse an individual or entity if it is results from "documentation of compliance with agency requirements or standards or as the result of recognition for achievement given under an agency program of recognition for accomplishment in support of the agency's mission." See 5 CFR 2635.702(c). Set forth below is a specific example that is included in this government-wide regulation:

**Example 3:**

The Administrator of the Environmental Protection Agency may sign a letter to an oil company indicating that its refining operations are in compliance with Federal air quality standards even though he knows that the company has routinely displayed letters of this type in television commercials portraying it as a “trustee of the environment for future generations.”

If you decide to recognize the assemblyman, then I suggest that you take steps to be super clear that he cannot use his award from EPA in connection with his reelection. In other words, he could list it as an award as part of his biographical information or otherwise display the letter (see above example), but he should not use it to indicate in any way that EPA or its employees support his candidacy for reelection. The EPA and its employees cannot be involved in partisan political activity, which is defined as any activity directed at the success or failure of a political party, a candidate for partisan political office, or partisan political group. *See* 5 CFR 734.101.

Thanks for asking the question and let me know if you need any further advice.

Justina

Justina Fugh | Senior Counsel for Ethics | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

## Climate Leadership Awards

- The sixth annual Climate Leadership Conference convenes a global audience of climate, energy, and sustainability professionals to discuss policy, innovation, and business, on March 1-3 in Chicago, Illinois.
- It is managed by two non-governmental organizations – The Climate Registry (TCR) and The Center for Climate and Energy Solutions (C2ES). EPA is a headline sponsor of the conference.
- Corporate sponsors include Edison Energy, Exelon, Sempra Energy, Pacific Gas and Electric, Renewable Choice Energy, Ingersoll Rand, the National Biodiesel Board, and many others.
- As part of the conference, EPA – with TCR and C2ES – co-sponsors the Climate Leadership Awards dinner on the second evening of the conference.
  - EPA's role is to read the names of award winners in two of the award categories. The recipients will be presented the awards by the other two sponsors.
  - In past years, EPA typically has issued a press release but it is optional.
  - EPA's logo will appear on the awards.
  - EPA's participation in this year's ceremony is quite scaled back compared to prior years (e.g., no EPA keynote speakers or conference panelists this year).

## 2017 Award Winners

The award recipients were selected based on applications by or on behalf of organizations/individuals. Applications were reviewed by EPA, C2ES, and TCR in collaboration with independent committees of recognized experts. EPA reviewed all applicants to ensure that they are in good standing with EPA, and passed an EPA compliance screen. The following award recipients have already been notified that they will be receiving an award at the ceremony on March 2:

- For organizational leadership: Dallas Fort Worth Airport; Goldman Sachs; IBM; Lockheed Martin; Proctor and Gamble.
- For individual leadership: Eduardo Garcia; California State Assembly; Jairo Garcia, City of Atlanta; Sophia Mendelsohn, JetBlue Airways.
- For supply chain leadership: Clif Bar; US Postal Service.
- For greenhouse gas management excellence: Bank of America; Gap; Goldman Sachs; NRG Energy, Inc.
- For innovative partnerships: Atlanta Better Buildings Challenge; San Mateo County RICAPS Initiative (Regionally Integrated Climate Action Planning Suite).

## Background

- EPA has co-sponsored for the past five years. It is a legacy of EPA's former Climate Leaders program (which EPA launched in 2002 and phased out in 2010). The sponsoring group in EPA is the Climate Protection Partnerships Division in the Office of Air and Radiation.
- The costs of the conference are the responsibility of TCR and C2ES; EPA participates primarily for the awards ceremony and contributes \$24,950. TCR and C2ES contribute the bulk of the funding for the conference but we do not have information on the amount of their funding.
- Three EPA Headquarters staff are planning to attend and we estimate the cost of their travel will be approximately \$3,000 to \$4,000.

**To:** Schnare, David[schnare.david@epa.gov]  
**Cc:** Marlae Schnare; **Personal Email/Ex. 6**  
**From:** David Schnare  
**Sent:** Thur 2/2/2017 1:54:07 AM  
**Subject:** Fwd: Federal workers turn to encryption to thwart Trump

Sent from my iPad

Begin forwarded message:

**From:** Daniel Simmons <**Personal Address/Ex. 6**>  
**Date:** February 1, 2017 at 8:38:20 PM EST  
**To:** David Schnare <Schnare@torcastlelaw.net>, David Kreutzer  
<david@**Personal Address/Ex. 6**>  
**Subject:** Fwd: Federal workers turn to encryption to thwart Trump

These people are insane.

---

From: POLITICO Pro <politicoemail@politicopro.com>  
Sent: Wednesday, February 1, 2017 8:12 PM  
Subject: Federal workers turn to encryption to thwart Trump  
To: <dsimmons@ierdc.org>

### **Federal workers turn to encryption to thwart Trump**

By Andrew Restuccia, Marianne LeVine and Nahal Toosi

02/01/2017 08:05 PM EDT

Federal employees worried that President Donald Trump will gut their agencies are creating new email addresses, signing up for encrypted messaging apps and looking for other, protected ways to push back against the new administration's agenda.

Whether inside the EPA, within the Foreign Service, on the edges of the Labor Department or beyond, employees are using new technology as well as more old-fashioned approaches — such as private face-to-face meetings — to organize letters, talk strategy, or contact media outlets and other groups to express their dissent.

The goal is to get their message across while not violating any rules covering workplace communications, which can be monitored by the government and could potentially get them

fired.

At the EPA, a small group of career employees — numbering less than a dozen so far — are using an encrypted messaging app to discuss what to do if Trump’s political appointees undermine their agency’s mission to protect public health and the environment, flout the law, or delete valuable scientific data that the agency has been collecting for years, sources told POLITICO.

Fearing for their jobs, the employees began communicating incognito using the app Signal shortly after Trump’s inauguration. Signal, like WhatsApp and other mobile phone software, encrypts all communications, making it more difficult for hackers to gain access to them.

One EPA employee even got a new, more secure cell phone, and another joked about getting a “burner phone.”

“I have no idea where this is going to go. I think we’re all just taking it one day at a time and respond in a way that seems appropriate and right,” said one of the EPA employees involved in the clandestine effort, who like others quoted in the story was granted anonymity to talk about the sensitive discussions.

The employee added that the goal is to “create a network across the agency” of people who will raise red flags if Trump’s appointees do anything unlawful.

The White House did not immediately respond to a request for comment.

While many workers across the federal government are still in wait-and-see mode, the first two weeks of the Trump administration — with its flurry of executive orders that have in some cases upended lives — have sent a sobering message to others who believe they must act now.

In recent days, career employees at the State Department gathered nearly 1,000 signatures for what’s known as a “Dissent Channel” memo in which they express their anger over a Trump executive order that bars immigrants from seven Muslim-majority countries and halts refugee admissions to the country. The number of signatures was extraordinarily high, even though the letter was submitted after White House spokesman Sean Spicer essentially warned the dissenting diplomats they were risking their jobs.

The executive order on immigration and refugees caused widespread panic at airports, spurring protests and outrage around the world.

It also led to what has been the most high-profile act of defiance yet from a Trump administration official: Acting Attorney General Sally Yates on Monday ordered the Department of Justice’s lawyers not to defend the order in court. Yates was fired that same night.

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A federal worker familiar with the letter's circulation said that it's being signed by hundreds of current and former DOL employees.

According to a [draft of the letter](#) obtained by POLITICO, the employees write that they have "serious concerns" about the fast-food magnate's willingness to protect the rights of workers given some of his past comments and actions.

The draft of the letter criticizes Puzder's comments about women, and cites some of his restaurants' advertisements which feature scantily clad women eating burgers in bikinis. Puzder has defended the ads.

"One of us once heard a colleague ask, quite seriously, whether it would violate workplace rules of civility and prohibitions against sexual harassment to view Mr. Puzder's ads on a government computer," the letter says. "We think the question is a good one."

The federal employees interviewed for this story stressed that they see themselves as non-partisan stewards of the government. But several also said they believe they have a duty to speak out if they feel a policy is undermining their mission.

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"I think we all have to look within ourselves and say 'Where is that line that I will not cross?'" one Foreign Service officer said.

Since Trump was elected in November, many State Department employees have also met quietly for other reasons. Groups of Muslims who work at Foggy Bottom, for instance, have quietly held meetings to discuss fears that they could be subject to witch hunts and see their careers stall under the new administration. A few of Trump's top aides have spoken out against radical Islamism in such harsh terms that some Muslims believe the aides are opposed to the religion of Islam as a whole.

Steven Aftergood, who directs the Project on Government Secrecy at the Federation of American Scientists, indicated that it's too soon to say if there's a broad trend of bureaucratic resistance to Trump taking hold.

"Quite a few federal employees seem to be looking for constructive ways to express discontent," he said. "Meanwhile, tension is still growing, not subsiding."



EPA employees are uniquely concerned about their future, having faced barbs from Trump advisers who have toyed with cutting the agency's staff by **two-thirds and from other Republicans who want to eliminate the agency altogether. So career staffers are discussing the best way to alert the public to what's happening behind the scenes.**

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**EPA employees have started reaching out to former Obama administration political appointees, who they hope will help them spread the word about any possible improper conduct at the agency.**

**"It's probably much safer to have those folk act as the conduit and to act as the gathering point rather than somebody in the agency," the employee said. "You're putting your career and your livelihood and your paycheck at risk every time you talk to somebody."**

**Organizations like the Government Accountability Project have been busy as federal employees fret about what their new bosses may ask them to do.**

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**The largest group of callers? "The people who want to know what to do if they're asked to violate the law," Clark said.**

**Jeff Ruch, the executive director of Public Employees for Environmental Responsibility, said EPA employees are in perhaps the "deepest pit of despair" among his group's membership.**

**He said his group has been fielding calls on everything from what triggers a reduction in the federal workforce to how long they can carry health insurance benefits if they are pushed out.**

**Asked how EPA employees are feeling, Ruch said, "In the broadest sense, scared and depressed."**

***Rachael Bade contributed to this report.***

***To view online:***

**<https://www.politicopro.com/technology/story/2017/02/federal-workers-turn-to-encryption-to-thwart-trump-146680>**

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Energy: all tags. To change your alert settings, please go to

<https://www.politicopro.com/settings>

This email was sent by: **POLITICO, LLC**  
1000 Wilson Blvd. Arlington, VA, 22209, USA

**To:** Schnare, David[schnare.david@epa.gov]; Actadmmccabe, Catherine17[Actadmmccabe.catherine17@epa.gov]; Flynn, Mike[Flynn.Mike@epa.gov]; Benton, Donald[benton.donald@epa.gov]  
**Cc:** Hull, George[Hull.George@epa.gov]; Grantham, Nancy[Grantham.Nancy@epa.gov]  
**From:** Reeder, John  
**Sent:** Thur 2/2/2017 3:03:54 PM  
**Subject:** RE: Federal workers turn to encryption to thwart Trump

Interesting thought David.

We have a system for “ideation” called GreenSpark, which facilitated broad scale employee engagement on a range of topics. What you suggest has significant differences with past use, but we could explore whether the technology platform itself would be useable for something like the DOS system.

Obviously much to discuss before actually launching such a thing...but for now I will explore options.

Thank you,

John E. Reeder

**From:** Schnare, David  
**Sent:** Thursday, February 02, 2017 8:53 AM  
**To:** Reeder, John <Reeder.John@epa.gov>; Actadmmccabe, Catherine17 <Actadmmccabe.catherine17@epa.gov>; Flynn, Mike <Flynn.Mike@epa.gov>; Benton, Donald <benton.donald@epa.gov>  
**Subject:** RE: Federal workers turn to encryption to thwart Trump

We might need to seriously consider a “dissent” line like the one at State. It would give them an outlet, would provide insight into their concerns, would help spot miscommunications and bad rumors, and would demonstrate the openness with which this administration wishes to act.

dschnare

**From:** Reeder, John  
**Sent:** Thursday, February 2, 2017 8:40 AM  
**To:** Schnare, David <[schnare.david@epa.gov](mailto:schnare.david@epa.gov)>; Actadmmccabe, Catherine17 <[Actadmmccabe.catherine17@epa.gov](mailto:Actadmmccabe.catherine17@epa.gov)>; Flynn, Mike <[Flynn.Mike@epa.gov](mailto:Flynn.Mike@epa.gov)>; Benton, Donald <[benton.donald@epa.gov](mailto:benton.donald@epa.gov)>  
**Subject:** RE: Federal workers turn to encryption to thwart Trump

Received. We'll talk over this am.

**From:** Schnare, David  
**Sent:** Thursday, February 02, 2017 8:20 AM  
**To:** Actadmmccabe, Catherine17 <[Actadmmccabe.catherine17@epa.gov](mailto:Actadmmccabe.catherine17@epa.gov)>; Flynn, Mike <[Flynn.Mike@epa.gov](mailto:Flynn.Mike@epa.gov)>; Benton, Donald <[benton.donald@epa.gov](mailto:benton.donald@epa.gov)>; Reeder, John <[Reeder.John@epa.gov](mailto:Reeder.John@epa.gov)>  
**Subject:** FW: Federal workers turn to encryption to thwart Trump

Career SES needs to address this with gravity and speed. It needs to be done at the Division Director level.

dschnare

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**To:** Benton, Donald[benton.donald@epa.gov]; Flynn, Mike[Flynn.Mike@epa.gov]; Allen, Reginald[Allen.Reginald@epa.gov]; Reeder, John[Reeder.John@epa.gov]  
**From:** Schnare, David  
**Sent:** Tue 2/14/2017 1:18:21 AM  
**Subject:** Pruitt oath

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dschnare

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**Cc:** Minoli, Kevin[Minoli.Kevin@epa.gov]; Hull, George[Hull.George@epa.gov]; Grantham, Nancy[Grantham.Nancy@epa.gov]  
**From:** Schnare, David  
**Sent:** Fri 2/3/2017 2:27:05 PM  
**Subject:** RE: Federal workers turn to encryption to thwart Trump

My concern is not about apps. I'm sure these are being used on personal phones, not government equipment. My concern is about the deeper problem – open rebellion by the staff. Our career managers need to get the staff's attention, need to tell them that elections have consequences, but explain that Mr. Pruitt is deeply committed to following the law and serving the interests of the public, specifically to protect public health and the environment. The staff have a duty to implement the President's program and they will have every opportunity to help shape that program, based on their knowledge and experience. Trust will grow out of experience with the new team, but destructive attitudes will be exactly that – destructive. That is not EPA's culture, never has been. If our SES can't get that message across, I'd like to know why.

d.

**From:** Reeder, John  
**Sent:** Friday, February 3, 2017 8:44 AM  
**To:** Schnare, David <schnare.david@epa.gov>; Actadmmccabe, Catherine17 <Actadmmccabe.catherine17@epa.gov>; Flynn, Mike <Flynn.Mike@epa.gov>; Benton, Donald <benton.donald@epa.gov>  
**Cc:** Minoli, Kevin <Minoli.Kevin@epa.gov>; Hull, George <Hull.George@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>  
**Subject:** RE: Federal workers turn to encryption to thwart Trump

Good morning,

David, after receiving your note yesterday I explored options for responding. It's particularly difficult to formulate any communication that doesn't give this additional press attention. We are exploring the "apps" issue from an IT perspective, and Steve Fine has reviewed our policies. The bottom line is employees are not allowed to download "unapproved" apps to government equipment. However, we don't know from the press reports whether the reported activity was on employee's own time or own equipment. We might learn more this morning whether we can determine whether government equipment was used (I don't want to get ahead of Steve on this). In consultation with our internal comms team and others, we think that addressing the underlying issue (rather than apps) may be a wiser course, if we can somehow communicate that all existing channels for reporting anything unlawful remain available to employees (e.g., OIG hotline, EPA's elevation policy, Scientific Integrity Policy), without making

reference to news reports (maybe obliquely, at most).

I know that Don has asked Steve a question about this too, so we may want to get the right folks in a room to talk over potential next steps.

The people that I've involved informally so far include Kevin Minoli, George & Nancy, and Steve Fine. Catherine and Mike are aware of the issue, but haven't been provided any updates/details as yet.

Let me know if you'd like to find some time this morning to gather a group.

John R

564 6082

**From:** Schnare, David  
**Sent:** Thursday, February 02, 2017 8:20 AM  
**To:** Actadmmccabe, Catherine17 <[Actadmmccabe.catherine17@epa.gov](mailto:Actadmmccabe.catherine17@epa.gov)>; Flynn, Mike <[Flynn.Mike@epa.gov](mailto:Flynn.Mike@epa.gov)>; Benton, Donald <[benton.donald@epa.gov](mailto:benton.donald@epa.gov)>; Reeder, John <[Reeder.John@epa.gov](mailto:Reeder.John@epa.gov)>  
**Subject:** FW: Federal workers turn to encryption to thwart Trump

Career SES needs to address this with gravity and speed. It needs to be done at the Division Director level.

dschnare

From: POLITICO Pro <[politicoemail@politicopro.com](mailto:politicoemail@politicopro.com)>  
Sent: Wednesday, February 1, 2017 8:12 PM

Subject: Federal workers turn to encryption to thwart Trump

## **Federal workers turn to encryption to thwart Trump**

By Andrew Restuccia, Marianne LeVine and Nahal Toosi

02/01/2017 08:05 PM EDT

Federal employees worried that President Donald Trump will gut their agencies are creating new email addresses, signing up for encrypted messaging apps and looking for other, protected ways to push back against the new administration's agenda.

Whether inside the EPA, within the Foreign Service, on the edges of the Labor Department or beyond, employees are using new technology as well as more old-fashioned approaches — such as private face-to-face meetings — to organize letters, talk strategy, or contact media outlets and other groups to express their dissent.

The goal is to get their message across while not violating any rules covering workplace communications, which can be monitored by the government and could potentially get them fired.

At the EPA, a small group of career employees — numbering less than a dozen so far — are using an encrypted messaging app to discuss what to do if Trump's political appointees undermine their agency's mission to protect public health and the environment, flout the law, or delete valuable scientific data that the agency has been collecting for years, sources told POLITICO.

Fearing for their jobs, the employees began communicating incognito using the app Signal shortly after Trump's inauguration. Signal, like WhatsApp and other mobile phone software, encrypts all communications, making it more difficult for hackers to gain access to them.

One EPA employee even got a new, more secure cell phone, and another joked about getting a "burner phone."

"I have no idea where this is going to go. I think we're all just taking it one day at a time and respond in a way that seems appropriate and right," said one of the EPA employees involved in the clandestine effort, who like others quoted in the story was granted anonymity to talk about the sensitive discussions.

The employee added that the goal is to "create a network across the agency" of people who will raise red flags if Trump's appointees do anything unlawful.

The White House did not immediately respond to a request for comment.

While many workers across the federal government are still in wait-and-see mode, the first

two weeks of the Trump administration — with its flurry of executive orders that have in some cases upended lives — have sent a sobering message to others who believe they must act now.

In recent days, career employees at the State Department gathered nearly 1,000 signatures for what's known as a "Dissent Channel" memo in which they express their anger over a Trump executive order that bars immigrants from seven Muslim-majority countries and halts refugee admissions to the country. The number of signatures was extraordinarily high, even though the letter was submitted after White House spokesman Sean Spicer essentially warned the dissenting diplomats they were risking their jobs.

The executive order on immigration and refugees caused widespread panic at airports, spurring protests and outrage around the world.

It also led to what has been the most high-profile act of defiance yet from a Trump administration official: Acting Attorney General Sally Yates on Monday ordered the Department of Justice's lawyers not to defend the order in court. Yates was fired that same night.

Current and former employees of the Labor Department, meanwhile, are using their private email accounts to send around a link to a letter asking senators to oppose the nomination of Andrew Puzder for the secretary of their agency. The employees may sign on to the letter using Google Docs. The letter will not be submitted to the Senate HELP Committee, and the signatures will not be made public, unless 200 current employees sign on.

A federal worker familiar with the letter's circulation said that it's being signed by hundreds of current and former DOL employees.

According to a [draft of the letter](#) obtained by POLITICO, the employees write that they have "serious concerns" about the fast-food magnate's willingness to protect the rights of workers given some of his past comments and actions.

The draft of the letter criticizes Puzder's comments about women, and cites some of his restaurants' advertisements which feature scantily clad women eating burgers in bikinis. Puzder has defended the ads.

"One of us once heard a colleague ask, quite seriously, whether it would violate workplace rules of civility and prohibitions against sexual harassment to view Mr. Puzder's ads on a government computer," the letter says. "We think the question is a good one."

The federal employees interviewed for this story stressed that they see themselves as non-partisan stewards of the government. But several also said they believe they have a duty to speak out if they feel a policy is undermining their mission.

Drafts of the Dissent Channel memo signed by the State Department employees insist, for instance, that instead of protecting U.S. national security through his new executive order

on refugees and immigrants, Trump is endangering the United States by bolstering the terrorists' narrative that the West hates Muslims.

"I think we all have to look within ourselves and say 'Where is that line that I will not cross?'" one Foreign Service officer said.

Since Trump was elected in November, many State Department employees have also met quietly for other reasons. Groups of Muslims who work at Foggy Bottom, for instance, have quietly held meetings to discuss fears that they could be subject to witch hunts and see their careers stall under the new administration. A few of Trump's top aides have spoken out against radical Islamism in such harsh terms that some Muslims believe the aides are opposed to the religion of Islam as a whole.

Steven Aftergood, who directs the Project on Government Secrecy at the Federation of American Scientists, indicated that it's too soon to say if there's a broad trend of bureaucratic resistance to Trump taking hold.

"Quite a few federal employees seem to be looking for constructive ways to express discontent," he said. "Meanwhile, tension is still growing, not subsiding."

EPA employees are uniquely concerned about their future, having faced barbs from Trump advisers who have toyed with cutting the agency's staff by two-thirds and from other Republicans who want to eliminate the agency altogether. So career staffers are discussing the best way to alert the public to what's happening behind the scenes.

"I'm suddenly spending my days comparing the importance of the oath I took when I started my career service and the code that I have as an American," an EPA employee said.

EPA employees have started reaching out to former Obama administration political appointees, who they hope will help them spread the word about any possible improper conduct at the agency.

"It's probably much safer to have those folk act as the conduit and to act as the gathering point rather than somebody in the agency," the employee said. "You're putting your career and your livelihood and your paycheck at risk every time you talk to somebody."

Organizations like the Government Accountability Project have been busy as federal employees fret about what their new bosses may ask them to do.

"We've had a significant number of federal employees who have contacted us in recent weeks," said Louis Clark, the nonprofit's CEO. "It has to be the largest influx of people trying to reach us that we've seen."

The largest group of callers? "The people who want to know what to do if they're asked to violate the law," Clark said.

Jeff Ruch, the executive director of Public Employees for Environmental Responsibility, said EPA employees are in perhaps the “deepest pit of despair” among his group’s membership.

He said his group has been fielding calls on everything from what triggers a reduction in the federal workforce to how long they can carry health insurance benefits if they are pushed out.